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Montana Constitutional Convention Occasional Papers

Montana Constitution of 1884

Prepared By:
Montana Constitutional Convention Commission

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MONTANA CONSTITUTIONAL CONVENTION

1971-1972

MONTANA CONSTITUTION OF 1884

CONSTITUTIONAL CONVENTION OCCASIONAL PAPER NO. 1

PREPARED BY

MONTANA CONSTITUTIONAL CONVENTION COMMISSION

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CONSTITUTIONAL CONVENTION COMMISSION

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PREFACE

The delegates to the 1971-1972 Montana Constitutional Convention will need historical, legal and comparative information about the Montana Constitution. Recognizing this need, the 1971 Legislative Assembly created the Constitutional Convention Commission and directed it to assemble and prepare essential information for the Convention.

To fulfill this responsibility, the Constitutional Convention Commission is preparing a series of research reports under the general title of Constitutional Convention Studies. In addition to the series of research reports the Commission has authorized the reprinting of certain documents for the use of Convention delegates.

This occasional paper republishes the Constitution of the State of Montana written by the Constitutional Convention of 1884 during its 27 day session and adopted by the people November 4, 1884 by a vote of 15,506 to 4,266.

The second Montana Constitutional Convention convened at Helena January 14, 1884, under the authorization of a House Joint Resolution approved by the territorial legislature March 7, 1883, and concluded its labors on February 9, 1884.

The constitution proposed by the convention of 45 members was ratified by the voters, but Congress failed to take any action on the subject of admission of Montana to the Union until 1889.

The third Montana Constitutional Convention, authorized by Congress in 1889, relied heavily on the work of the 1884 Convention. One authority, Margery H. Brown, a member of the Constitutional Convention Commission, noted in an article on Montana's Constitutional heritage:

> The legacy of the 1884 convention [in the 1889 Convention] was pronounced--in leadership, procedure, and constitutional text. An estimated ninety percent of the wording of the earlier constitution was readopted [in 1889]. Not only were its provisions recognized as a suitable distillation in the comparative process of state constitution writing, but the "old constitution" also possessed the aura of success: it had, after all, met the test of the ballot box.
>
> However, the decisions made in 1884 were all debated again in 1889, as the estimated 800,000 words of the published *Proceedings* attest, and

numerous changes were made in the light of experience in the intervening years. Executive terms were extended to four years, and legislative sessions were increased to sixty days. County courts were displaced by the establishment of a three-tier judicial system. The process for amending the constitution was made more difficult and the system for management of school lands was improved.

The mines tax exemption was carried over, and the gulf between the populous mining counties of the west and the sparse-settled stockraising counties of the east was partly bridged by compromise on apportionment, granting each county one senator.

The Constitution of 1884, unavailable to the general public for years, has been available only in the Montana Historical Society Library and as a federal document [49th Cong., 1st sess., Sec. Mis. Doc. no. 39, serial 23421]. The Journal of Minutes and the full longhand Proceedings of the 1884 Convention were only discovered in 1970 as the result of a long-term project of organizing the territorial records by the Office of the Secretary of State. The Secretary of State made the manuscripts available to the Montana Historical Society for microfilming and microfilm copies are now available in the Secretary of State's Office, the Historical Society Library, University of Montana Library and Montana State University Library.

The reprinting of this historic Montana document is respectfully submitted to the people of Montana and their delegates to the 1971-1972 Montana Constitutional Convention.

ALEXANDER BLEWETT

CHAIRMAN

1884 CONSTITUTIONAL CONVENTION DELEGATES

JANUARY 14 - FEBRUARY 9, 1884

DELEGATES AT LARGE

W. W. Wilson
T. C. Powers
Walter Cooper

COUNTY DELEGATES

Beaverhead

Joseph A. Brown
Robert B. Smith

Choteau

Timothy E. Collins
Wm. H. Hunt

Custer

Samuel R. Douglas
Charles W. Savage
Wm. Van Gasken

Dawson

J. T. Maloney

Deer Lodge

Joaquin Abascal
Elihu B. Waterbury
John C. Robinson

Gallatin

George O. Eaton
Edward F. Ferris
Samuel W. Langhorne
Fellows D. Pease
Robert P. Vivion

Jefferson

Edward McSorley
Nathaniel Merriman

Lewis & Clarke

Matthew Carroll
Cornelius Hedges
George Steell
Joseph K. Toole

Madison

James E. Callaway
Horatio S. Howell

Meagher

James Fergus
William F. Haase
Jos. F. McClintock

Missoula

John B. Catlin
Richard A. Eddy
W. J. McCormick
Wm. J. Stephens

Silver Bow

William A. Clark
Marcus Daly
Francis Medhurst
W. Y. Pemberton
T. L. Napton
J. C. C. Thornton

Yellowstone

Fred L. Greene
Francis M. Proctor

CONSTITUTION

OF THE

STATE OF MONTANA

AS ADOPTED BY THE

CONSTITUTIONAL CONVENTION

OF THE

TERRITORY OF MONTANA,

AT THE SESSION THEREOF

Begun Monday, January 14, A. D. 1884, and Concluded Saturday, February 9, A. D. 1884,

TO WHICH IS APPENDED

AN ADDRESS

TO THE ELECTORS OF THE TERRITORY OF MONTANA PREPARED BY DIRECTION OF THE CONVENTION.

PUBLISHED BY AUTHORITY.

HELENA, MONTANA
FISK BROTHERS, PRINTERS AND BINDERS.
1884.

CONSTITUTION OF THE

State of Montana.

PREAMBLE.

The object of the institution, maintenance, and administration of government, is to secure the existence of the body-politic, to protect it, and to furnish the individuals who compose it, with the power of enjoying in safety and tranquility their natural rights and the blessings of life; and whenever these great objects are not obtained, the people have a right to alter or change their form of government, and to take measures necessary for their safety, prosperity, and happiness.

The body politic is formed by a voluntary association of individuals; it is a social compact by which the whole people covenant with each citizen and each citizen with the whole people, that all should be governed by certain laws for the common good.

It is the duty of the people, therefore, in framing a constituion of government, to provide for an equitable mode of making laws, as well for an impartial interpretation and a faithful execution of them, that every man may at all times find his safety in them. We, therefore, the people of Montana, acknowledging with grateful hearts the goodness of the Great Legislator of the Universe, in affording us, in the course of His Providence, an opportunity, deliberately and peaceably, without fraud, violence or intimidation, of entering into an original, explicit, and solemn compact with each other, and of forming a constitution of civil government for ourselves and our posterity; and devoutly imploring His direction in so grand and interesting a design, do agree upon, ordain, and establish the following declaration of rights add form of government as the Constitution of the State of Montana.

ARTICLE I.

A Declaration of the Rights of the People of the State of Montana.

In order to assert our rights, acknowledge our duties, and proclaim the principles upon which our government is founded, we declare:

SEC. 1. That all political power is vested in and derived from the people; that all government, of right, originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

SEC. 2. That the people of this State have the sole and exclusive right of governing themselves, as a free, sovereign, and independent State, and to alter and abolish their Constitution and form of government whenever they may deem it necessary to their safety and happiness, provided such change be not repugnant to the Constitution of the United States

SEC. 3. That all persons are born equally free, and have certain natural, essential, and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property, and of seeking and obtaining their safety and happiness.

SEC. 4. That the free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be gurranteed: and no person shall be denied any civil or political rights, privilege or capacity, on account of his opinions concerning religion, but the liberty of conscience hereby secured, shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, by bigamous or polygamous marriage, or otherwise, or justify practices inconsistent with the good order, peace, or safety of the State, or opposed to the civil authority thereof, or of the United States. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

SEC. 5. That all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free axercise of the right of suffrage.

SEC. 6. That courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property, or character; and that right and justice should be administered without sale, denial or, delay.

SEC. 7 That the people shall be secure in their person, papers, homes, and effects, from unreasonable searches and seizures; and no warrant to search any place or seize sny person or thing, shall issue, without describing the place to be searched or the person or thing to be seized, as near as may be, nor without probable cause, supported by oath or affirmation, reduced to writing.

SEC. 8. That until otherwise provided by law, no person shall for felony be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or navel forces, or in the militia when in actual service in the time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information.

SEC. 9. That treason against the State shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; that no person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or on his confession in open court; that no person shall be attainted of treason or felony by the Legislative Assembly; that no conviction shall work corruption of blood or forfeiture of estate; that the estates of persons who may destroy their own lives shall descend or vest as in cases of natural death.

SEC. 10. That no law shall be passed impairing the freedom of speech; that every person shall be free to speak, write, or publish whatever he will on any subject, being responsible for all abuse of that liberty; and that in all suits and prosecutions for libel, the truth thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the fact.

SEC. 11. That no *ex-post facto* law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges, franchises, or immunities shall be passed by the Legislative Assembly.

SEC. 12. That no person shall be imprisoned for debt except in such manner as may be prescribed by law, upon refusal to deliver up his estate for the benefit of his creditors, or, in cases of tort, where there is strong presumption of fraud.

SEC. 13. That the right of any person to keep and bear arms in defense of his own home, person and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be construed to justify the practise of carrying concealed weapons.

SEC. 14. That private property shall not be taken for private use, unless by consent of the owner, except for private ways of necessity, and except for reservoirs drains, flumes, or ditches on or across the lands of others, for agricultural, mining, milling, domestic, or sanitary purposes.

SEC. 15. That private property shall not be taken or damaged for public or private use, without just compensation. Such compensation shall be ascertained by a board of commissioners, of not less than three freeholders, or by a jury, when required by the owner of the property, in such manner as may be prescribed by law; and until the same shall be paid to the owner or into court for the owner, the property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

SEC. 16. That in criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

SEC. 17. That no person shall be imprisoned for the purpose of securing his testimony in any case longer than may be necessary in order to take his deposition. If he can give security, he shall be discharged; if he can not give security, his deposition shall be taken by some Judge of the Supreme, district, or county court, at the earliest time he can attend, at some convenient place appointed by him for that purpose, of which time and place the accused and the attorney prosecuting for the people shall have reasonable notice. The accused shall have the right to appear in person and by counsel. If he have no counsel, the judge shall assign him one in that behalf only. On the completion of such examination, the witness shall be discharged on his own recognizance, entered into before said judge, but such deposition shall not be used, if in the opinion of the court the personal attendance of the witness might be procured by the prosecution, or is procured by the accused. No exception shall be taken to such deposition as to matters of form.

SEC. 18. That no person shall be compelled to testify against himself in a criminal case, nor shall any person be twice put in jeopardy for the same offense.

SEC. 19. That all persons shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great.

SEC. 20. That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

SEC. 21. That the privilege of the writ of *habeas corpus* shall never be suspended, unless in case of rebellion or invasion the public safety require it.

SEC. 22. That the military shall always be in strict subordination to the civil power; that no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law.

SEC. 23. The right of trial by jury shall remain inviolate in criminal cases; but a jury in civil cases in all courts, or in criminal cases not of the grade of felony, may consist of less than twelve men, as may be prescribed by law. And the Legislative Assembly may provide by law that, in civil cases, any number, not less than two-thirds of a jury, may find a verdict, and that such verdict, when so found, shall be taken and held to have the same force and effect as if all of such jury concurred

therein. Hereafter, a grand jury shall consist of twelve men, any nine of whom, concurring, may find an indictment; *Provided*, The Legislative Assembly may change, regulate, or abolish the grand jury system.

SEC. 24. That the people have the right peaceably to assemble for the common good, and to apply to those invested with the powers of government for redress of grievances, by petition or remonstrance.

SEC. 25. That no person shall be deprived of life, liberty, or property without due process of law.

SEC. 26. That there shall never be in this State either slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted.

SEC. 27. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

SEC. 28. The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

ARTICLE II.

Boundaries.

SEC. 1 The boundaries of the State of Montana shall be the same as the boundaries of the Territory of Montana, at the time of its admission into the Union.

ARTICLE III.

Distribution of Powers.

SEC. 1. The powers of the government of this State are divided into three distinct departments: The Legislative, Executive, and Judicial; and no person, or collection of persons, charged with the exercise of powers properly belonging to one of these departments, shall exercise any powers properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

ARTICLE IV.

Legislative Department.

SEC. 1. The legislative power shall be vested in a Senate and House of Representatives, which shall be designated "The Legislative Assembly of the State of Montana."

SEC. 2. Senators shall be elected for the term of four years, and Representatives for the term of two years, except as is otherwise provided in this Constitution.

SEC. 3. No person shall be a Representative who shall not have attained the age of twenty-one years, or a Senator who shall not have attained the age of twenty-five years, and who shall not be a citizen of the United States, and who shall not (for at least twelve months next preceding his election) have resided within the county or district in which he shall be elected: *Provided*, That any person who, at the time of the adoption of this Constitution, was a qualified elector under the territorial laws, shall be eligible to the first Legislative Assembly.

SEC. 4. After the first session of the Legislative Assembly of the State, and until otherwise provided by law, the Senate shall consist of twenty-one members, and the House of Representatives of forty-five members. It shall be the duty of

the first Legislative Assemby to divide the State into Senatorial and Representative districts, but there shall be at least one Senator from each county. The Senatorial districts shall be numbered from one to twenty-one, if there be so many. The Senators shall be divided into two classes; those elected in districts designated by even numbers shall constitute one class, and those elected in districts designated by odd numbers shall constitute the other class, except that Senators elected in each of the districts having more than one Senator shall be divided as equally as may be between the two classes. The Senators of one class shall hold for two years, those of the other class shall hold for four years, to be decided by lot between the two classes, so that one half of the Senators, as nearly as practicable, may be elected bi-ennially thereafter.

SEC. 5. Each member of the first Legislative Assembly, as a compensation for his services, shall receive five dollars for each day's attendance, and twenty cents for each mile necessarily traveled in going to the seat of government from his residence and in returning from the seat of government to his residence by the usually traveled route, and shall receive no other compensation, perquisite, or allowance whatsoever. No session of the Legislative Assembly after the first, which may be sixty days, shall exceed forty days. After the first session the compensation of the members of the Legislative Assembly shall be as provided by law: *Provided*, That no Legislative Assembly shall fix its own compensation.

SEC. 6. The Legislative Assembly (except the first), shall meet at twelve o'clock noon, on the second Tuesday after the first Monday of January next succeeding the general election provided by law, and at twelve o'clock noon, on the second Tuesday after the first Monday of January of each alternate year thereafter, and at other times when convened by the Governor. The term of service of the members thereof shall begin the next day after their election, until otherwise provided by law.

SEC. 7. No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office under the State; and no member of Congress, or other person holding an office (except of attorney at law, notary public, or in the militia), under the United States or this State, shall be a member of either house during his continuance in office.

SEC. 8. No member of either house shall, during the term for which he shall have been elected, receive any increase of salary or mileage, under any law passed during such term.

SEC. 9. The Senate shall, at the beginning and close of each regular session, and at such other times as may be necessary, elect one of its members President *pro tempore*. The House of Representatives shall elect one of its members as Speaker. Each house shall choose its other officers, and shall judge of the election and qualification of its members.

SEC. 10. A majority of each house shall constitute a quorum, but a smaller number may adjourn from day to day, and compel the attendance of absent members.

SEC. 11. Each house shall have power to determine the rules of its proceedings, and punish its members or other persons for contempt or disorderly behavior in its presence; to protect its members against violence, or offers of bribes, or private solicitation, and, with the concurrence of two-thirds, to expel a member, and shall have all other powers necessary for the Legislative Assembly of a free State. A member expelled for corruption, shall not thereafter be eligible to either house of the Legislative Assembly; and punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense.

SEC. 12. Each house shall keep a journal of its proceedings, and may, in its discretion, from time to time, publish the same, except such parts as require secrecy, and the ayes and noes on any question shall, at the request of any two members, be entered on the journal.

SEC. 13. The sessions of each house and of the Committees of the Whole shall be open, unless the business is such as requires secrecy.

SEC 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SEC. 15. The members of the Legislative Assembly shall, in all cases, except treason, felony, violation of their oath of office, and breach or surety of the peace, be privileged from arrest, during their attendance at the sessions of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

SEC. 16. The House of Representatives shall have the sole power of impeachment. The concurrence of a majority of all the members shall be necessary to an impeachment. All impeachments shall be tried by the Senate, and, when sitting for that purpose, the Senators shall be upon oath or affirmation to do justice according to law and evidence. When the Governor or Lieutenant-Governor is on trial, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without a concurrence of two-thirds of the Senators elected.

SEC. 17. The Governor and other State and Judicial officers, except county judges and justices of the peace, shall be liable to impeachment for high crimes and misdemeanors, or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of honor, trust, or profit in the State. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment, and punishment according to law.

SEC. 18. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law.

SEC. 19. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

SEC. 20. The enacting clause of every law shall be as follows: "Be it enacted by the Legislative Assembly of the State of Montana."

SEC. 21. No act of the Legislative Assembly shall take effect until sixty days after the close of the session, unless in case of emergeney, (which shall be expressed in the preamble or body of the act), the Legislative Assembly shall, by a vote of two thirds of all the members present in each house, otherwise direct. No bill for the appropriation of money, except for the expenses of the government, shall be introduced after the twenty-fifth day of the session, except by unanimous consent of the house in which it is sought to be introduced.

SEC. 22. No bill shall be considered or become a law unless referred to a committee, returned therefrom, and printed for the use of the members.

SEC. 23. No bill, except appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

SEC. 24. No bill shall become a law, except by a vote of a majority of all the members present in each house, nor unless on its final passage the vote be taken by ayes and noes, and the names of those voting be entered on the journal.

SEC. 25. No law shall be revised or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revised, amended, extended, or conferred, shall be re-enacted and published at length.

SEC. 26. The Legislative Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: For granting divorces, laying out, opening, altering or working roads or highways, vacating roads, town plats, streets, alleys or public grounds; locating or changing county seats; regulating county or township affairs; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates, or constables; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions, or giving effect to informal or invalid deeds; summoning or impanneling grand or petit juries; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election, or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing ferries of toll bridges or toll roads; remitting fines, penalties, or forfeitures; creating, increasing, or dreceasing fees, percentage, or, allowances of public officers; changing the law of descent; granting to any corporation, association, or individual the right to lay down railroad tracks, or any special or exclusive privilege, immunity, or franchise whatever; for the punishment of crimes; changing the names of persons or places; for the assessment or collection of taxes; affecting estates of deceased persons, minors, or others under legal disabilities; extending the time for the collection of taxes; refunding money paid into the State treasury; relinquishing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein; legalizing, except as against the State, the unauthorized or invalid act of any officer; exempting property from taxation; restoring to citizenship persons convicted of infamous crimes; authorizing the creation, extention, or impairing of liens; creating offices, or prescribing the powers and duties of officers in counties, cities, townships, election, or school districts; or authorizing the adoption or legitimation of children. In all other cases, where a general law can be made applicable, no special law shall be enacted.

SEC. 27. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the Legislative Assembly immediately after their titles have been publicly read; and the fact of signing shall be at once entered upon the journal.

SEC. 28. The Legislative Assembly shall prescribe by law the number, duties, and compensation of the officers and employees of each house; and no payment shall be made from the State Treasury, or be in any way authorized to any person, except to an acting officer or employee elected or appointed in pursuance of law.

SEC. 29. No bill shall be passed giving any extra compensation to any public officer, servant, or employee, agent, or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim made against the State without previous authority of law.

SEC. 30. All stationery, printing, paper, fuel, and lights, used in the legislative and other departments of government, shall be furnished, and the printing and binding and distribution of the laws, journals and department reports and other printing and binding, and the repairing and furnishing the halls and rooms used for the meeting of the Legislative Assembly and its committees, shall be preformed under contract, to be given to the lowest bidder, below such maximum price and under

such regulations as may be prescribed by law. No member or officer of any department of the Government shall be in any way interested in any such contract; and all such contracts shall be subject to the approval of the Governor and State Treasurer.

SEC. 31 Except as otherwise provided in this Constitution, no law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment: *Provided*, That this shall not be construed to forbid the Legislative Assembly from fixing the salaries or emoluments of those officers first elected or appointed under this Constitution, where such salaries or emoluments are not fixed by this Constitution.

SEC. 32. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose amendments, as in the case of other bills.

SEC. 33 The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the State, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

SEC. 34. No money shall be paid out of the treasury, except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof.

SEC. 35. No appropriation shall be made for charitable, industrial, educational, or benevolent purposes to any person, corporation or community not under the absolute control of the State, nor to any denominational or sectarian institution or association.

SEC. 36. The Legislative Assembly shall not delegate to any special commission, private corporation, or association any power to make, supervise, or interfere with any municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes, or to perform any municipal function whatever.

SEC. 37. No act of the Legislative Assembly shall authorize the investment of trust funds by executors, administrators, guardians, or trustees in the bonds or stock of any private corporation.

SEC. 38. The Legislative Assembly shall have no power to pass any law authorizing the State, or any county in this State, to contract any debt or obligation in the construction of any railroad, nor give or loan its credit to or in aid of the construction of the same.

SEC. 39. No obligation or liability of any person, association or corporation, held or owned by the State, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released, or postponed, or in any way diminished by the Legislative Assembly; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury.

SEC. 40. Every order, resolution, or vote, in which the concurrence of both houses may be necessary, except on the question of adjournment, or relating solely to the transaction of the business of the two houses, shall be presented to the Governor, and before it shall take effect be approved by him, or, being disapproved, be repassed by two thirds of both houses, as prescribed in the case of a bill.

SEC. 41. If any person elected to either house of the Legislative Assembly shall offer or promise to give his vote or influence in favor of or against any measure or proporsition, pending or proposed to be introduced into the Legislative Assembly, in consideration or upon condition that any other person elected to the same

Legislative Assembly will give, or will promise or assent to give, his vote or influence in favor of or against any other measure or proposition, pending or proposed to be introduced into such Legislative Assemble, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the Legislative Assembly shall give his vote or influence for or against any measure or proposition, pending or proposed to be introduced into such Legislative Assembly, or offer, promise, or assent so to do, upon condition that any other member will give, or will promise or assent to give his vote or influence in favor of or against any other measure or proposition, pending or proposed to be introduced in such Legislative Assembly, or in consideration that any other member hath given his vote or influence for or against any other measure or proposition in such Legislative Assembly, he shall be deemed guilty of bribery, and any member of the Legislative Assembly, or person elected thereto, who shall be guilty of either of such offenses, shall be expelled, and shall not thereafter be eligible to the Legislative Assembly, and, on the conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

SEC. 42. Any person who shall directly or indirectly offer, give or promise, any money or thing of value, testimonial, privilege, or personal advantage, to any executive or judicial officer, or member of the Legislative Assembly, to influence him in the performance of any of his official or public duties, shall be deemed guilty of bribery, and be punished in such manner as shall be provided by law.

SEC. 43. The offense of corrupt solicitation of members of the Legislative Assembly, or of public officers of the State, or of any municipal division thereof, and the occupation or practice of solicitation of such members or officers, to influence their official action, shall be defined by law, and shall be punishable by fine and imprisonment.

SEC. 44. A member who has a personal or private interest in any measure or bill proposed or pending before the Legislative Assembly shall disclose the fact to the house of which he is a member, and shall not vote thereon.

Apportionment and Representation.

SEC. 45. Until otherwise provided by law, the Representative of the State of Montana in the Congress of the United States shall be elected by the State at large. When a new apportionment shall be made by Congress, the Legislative Assembly shall divide the State into Congressional districts accordingly.

SEC. 46. The Legislative assembly, at its first session held under this Constitution, shall provide by law for an enumeration of the inhabitants of the State, and as often thereafter as in the opinion of the Legislative Assembly such enumeration shall be necessary, and shall revise and adjust the apportionment for Senators and Representatives on the basis of such enumeration according to the ratio to be fixed by law.

SEC. 47. The first Legislative Assembly held under this Constitution shall be constituted as follows: The Senate shall consist of the same number of Senators, and the House of Representatives of the same number of Representatives, as the Territorial Council and the House of Representatives at the time of the admission of the State into the Union, and for that purpose the Council and Representative districts, as then provided by law, shall constitute the Senatorial and Representative districts for the election of Senators and Representatives of the first Legislative Assembly under this Constitution.

SEC. 48. The Legislative Assemby shall not increase the Senate and House o Representatives to a number greater, in the aggregate, than one hundred, prior to the year, A. D. 1900, and in case of such increase, the ratio of Senators to Representatives provided for in Section four of this Article shall be preserved as nearly as practicable.

SEC. 49. When a Senatorial or Representative district shall be composed of two or more counties, they shall be contiguous and the district as compact as may be. No county shall be divided in the formation of a Senatorial or Representative district.

ARTICLE V.

Executive Department.

SEC. 1. The Executive Department shall consist of a Governor, Lieutenant-Governor, Secretary of State, State Auditor, State Treasurer, Attorney General, and Superintendent of Public Instruction, each of whom shall hold his office for two years, beginning on the first Monday in January next after his election, except as otherwise provided in this Constitution. The officers of the Executive Department, excepting the Lieutenant Governor, shall, during their term of offices, reside at the seat of government, where they shall keep the public records, books, and papers. They shall perform such duties as are prescribed by this Constitution, and as may be prescribed by law.

SEC. 2. The officers provided for in Section 1 of this Article shall be elected by the qualified electors of the State at the time and places of voting for members of the Legislative Assembly, and the persons, respectively, having the highest number of votes for the office voted for shall be elected; but if two or more shall have an equal and the highest number of votes for any one of said offices, the two Houses of the Legislative Assembly, at its next regular session, shall forthwith, by joint ballot, elect one of such persons for said office. The returns of election for the officers named in Section 1 shall be made in such manner as may be prescribed by law, and all contested elections of the same, other than provided for in this Section, shall be determined as may be prescribed by law.

SEC. 3. No person shall be eligible to the office of Governor, Lieutenant-Governor, or Superintendent of Public Instruction, unless he shall have attained the age of thirty years at the time of his election, nor to the office of Secretary of State, State Auditor, or State Treasurer, unless he shall have attained the age of twenty-five years, nor to the office of Attorney General unless he shall have attained the age of thirty years, and have been admitted to practice in the Supreme Court of the State, or Territory of Montana, and be in good standing at the time of his election. In addition to the qualifications above prescribed each of the officers named shall be a citizen of the United States, and have resided within the State or Territory two years next preceding his election.

SEC. 4. The Governor, Secretary of State, State Auditor, State Treasurer, Attorney General and Superintendent of Public Instruction, shall, quarterly as due, during their continuance in office, receive for their services compensation, which, for the term next ensuing after the adoption of this Constitution, is fixed as follows: Governor, three thousand six hundred dollars per annum; Secretary of State, twenty-two hundred dollars per annum; State Auditor, State Treasurer, Attorney General, and Superintendent of Public Instruction, two thousand dollars each per annum. The Lieutenant-Governor shall receive the same per diem as may be provided by law for the Speaker of the Legislative Assembly, to be allowed only during

the sessions of the Legislative Assembly. The compensatons enumerated shall be in full for all services by said officers respectively rendered in any official capacity or employment whatever during their respective terms of office. No officer named in this section shall receive, for the performance of any official duty, any fee for his own use; but all fees fixed by law for the performance by either of them of any official duty, shall be collected in advance, and deposited with the State Treasurer quarterly to the credit of the State. No officer mentioned in this Section shall be eligible to, or hold any other public office, except Regents of the State University, during his tenure of office. The Legislative Assembly may by law diminish or increase the compensation of any or all of the officers named in this Section, but no such diminution or increase shall effect the salaries of the officers then in office during their term: *Provided however*, The Legislative Assembly may provide for the payment of mileage to the Governor, Lieutenant-Governor, Secretary of State, Attorney General, and Superintendent of Public Instruction, while traveling within the State in the performance of official duty.

SEC. 5. The supreme executive power of the State shall be vested in the Governor, who shall see that the laws are faithfully executed.

SEC. 6. The Governor shall nominate, and, by and with the consent of the Senate, appoint all officers whose offices are established by this Constitution, or which may he created by law, and whose appointment or election is not otherwise provided for. If during the recess of the Senate a vacancy occur in any such office, the Governor shall appoint some fit person to discharge the duties thereof until the next meeting of the Senate, when he shall nominate some person to fill such office. If the office of Secretary of State, State Auditor, State Treasurer, Attorney General, or Superintendent of Public Instruction, shall be vacated by death, resignation, or otherwise, it shall be the duty of the Governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law. The Senate in deliberating and acting upon Executive nominations may sit with closed doors.

SEC. 7. The Governor, Secretary of State, and Attorney General shall constitute a board to be known as the Board of Pardons. Said board, or a majority thereof, shall have power to remit fines and forfeitures, and to grant commutations and pardons after conviction and judgment, either absolutely or upon such conditions as they may impose, in all cases of offenses against the State, except treason or conviction on impeachment. The Legislative Assembly shall by law prescribe the sessions of said board, and the manner in which applications shall be made, and regulate the proceedings thereon; but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except by the decision of a majority of said board, after a full hearing in open session, and until previous notice of the time and place of such hearing, and the relief applied for, shall have been given by publication in some newspaper of general circulation, at least once a week for two weeks. The proceedings and decision of the board shall be reduced to writing, and with their reasons for their actions in each case, and the dissent of any member who may disagree, signed by them, and filed, with all papers used upon the hearing, in the office of the Secretary of State. The Governor shall have power to grant respites or reprieves in all cases of convictions for offenses against the State, except treason or conviction on impeachment, but such respites or reprieves shall not extend beyond the next session of the Board of Pardons; and said board shall at such session continue or determine such respite or reprieve, or they may commute or pardon the offense, as herein provided. In cases of conviction for treason the Governor shall have the power to suspend the execution of the sentence until the case shall be

reported to the Legislative Assembly at its next regular session, when the Legislative Assembly shall either pardon or commute the sentence, direct its execution, or grant a further reprieve. He shall communicate to the Legislative Assembly, at each regular session, each case of remission of fine or forfeiture, reprieve, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of remission, commutation, pardon, or reprieve, with the reasons for granting the same, and the objections, if any, of any member of the board made thereto.

SEC. 8. The Governor may require information in writing from the officers of the Executive Department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required; he may also require information in writing, at any time, under oath, from all officers and managers of State institutions, upon any subject relating to the condition, management, and expenses of their respective offices and institutions, and may, at any time he deems it necessary, appoint a committee to investigate, and report to him upon the condition of any Executive office or State institution. The Governor shall, at the commencement of each session, and from time to time, by message, give to the Legislative Assembly information of the condition of the State, and shall recommend such measures as he shall deem expedient. He shall also send to the Legislative Assembly a statement, with vouchers, of the expenditures of all moneys belonging to the State and paid out by him. He shall also at the commencement of each session present estimates of the amount of money required to be raised by taxation for all purposes of the State.

SEC. 9. He may, on extraordinary occasions, convene the Legislative Assembly by proclamation, stating the purposes for which he has convened it, but when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session and other matters incidental thereto. He may also, by proclamation, convene the Senate in extraordinary session for the transaction of executive business.

SEC. 10. Every bill passed by the Legislative Assembly shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it, with his objections, to the house in which it originated, which house shall enter the objections at large upon its journal, and proceed to reconsider the bill. If then two-thirds of the members present agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members present in that house, it shall become a law, notwithstanding the objections of the Governor. In all such cases the vote of each house shall be determined by yeas and noes, to be entered on the journal. Any bill which shall not be returned by the Governor to the Legislative Assembly within ten days, Sundays excepted, after it shall have been presented to him, shall become a law in like manner as if he had signed it, unless the Legislative Assembly shall, by adjournment, prevent its return, in which case it shall be filed, with his objections, in the office of the Secretary of State, within ten days after such adjournment, Sundays excepted, or become a law.

SEC. 11. The Governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts approved shall become a law; and the item or items disapproved shall be void, unless enacted in the manner following; If the Legislative Assembly be in session he shall, within five days, transmit to the house in which the bill originated, a copy of the item or items thereof disapproved, together with his objections thereto, and

the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the Executive veto.

SEC. 12. In case of the failure to qualify the impeachment or conviction of felony or infamous crime of the Governor, or his death, removal from office, resignation, absence from the State, or inability to discharge the powers and duties of his office, the powers, duties, and emoluments of the office, for the residue of the term, or until the disability shall cease, shall devolve upon the Lieutenant-Governor.

SEC. 13. The Lieutenant-Governor shall be President of the Senate, but shall vote only when the Senate is equally divided. In case of the absence or disqualification of the Lieutenant-Governor, from any cause which applies to the Governor, or when he shall hold the office of Governor, then the President *pro tem.* of the Senate shall perform the duties of the Lieutenant-Governor until the vacancy is filled or the disability removed.

SEC. 14. In case of the failure to qualify in his office, death, resignation, absence from the State ,impeachment, conviction of felony or infamous crime, or disqualification from any cause, of both the Governor and Lieutenant-Governor, the duties of the Governor shall devolve upon the President of the Senate *pro tem.*, until such disqualification of either the Governor or Lieutenant-Governor be removed, or the vacancy filled; and if the President of the Senate, for any of the above named causes, shall become incapable of performing the duties of Governor, the same shall devolve upon the Speaker of the House.

SEC. 15. There shall be a seal of this State, which shall be kept by the Secretary of State, and used by him officially. It shall be known as "The Great Seal of the State of Montana."

SEC. 16. All grants and commissions shall be in the name and by the authority of the State of Montana, sealed with the great seal of the State, signed by the Governor, and countersigned by the Secretary of State.

SEC. 17. An account shall be kept by the officers of the Executive Department, and of all public institutions of the State, of all moneys received by them severally from all sources, and for every service performed, and of all moneys disbursed by them severally, and a semi-annual report thereof shall be made to the Governor, under oath; they shall also, at least twenty days preceding each regular session of the Legislative Assembly, make full and complete reports of their official transactions to the Governor, who shall transmit the same to the Legislative Assembly.

SEC. 18. The Governor, Secretary of State, and Attorney General shall constitute a board of State Prison Commissioners, which board shall have such supervision of all matters connected with the State Prison as may be prescribed by law. They shall also constitute a Board of Examiners, with power to examine all claims against the State, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. And no claim against the State, except salaries and compensation of officers fixed by law, shall be passed upon by the Legislative Assembly without first having been considered and acted upon by said board.

ARTICLE VI.

Judicial Department.

SEC. 1. The Judicial powers of the State, as to matters of law and equity, except as in this Constitution otherwise provided, shall be vested in a Supreme Court,

district courts, county courts, justices of the peace, and such other courts as may be created by law for cities and incorporated towns. But the Legislative Assembly may provide for the abolition of county courts and the transfer of their probate and other jurisdiction to the district courts, and in such case may provide that such district courts shall be always open for the transaction of business, except on legal holidays and non-judicial days.

SUPREME COURT.

SEC. 2. The Supreme Court, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State, and shall have a general superintending control over all inferior courts, under such regulations and limitations as may be prescribed by law.

SEC. 3. Said court, or any Judge thereof, shall have power to issue writs of *habeas corpus*, *mandamus*, *quo warranto*, *certiorari*, prohibition, injunction, and other original and remedial writs, with the authority to hear and determine the same; and when a jury may be required by the Supreme Court to try an issue of fact, the court shall have power to summon a jury to try such question of fact in that court.

SEC. 4. At least two terms of the Supreme Court shall be held each year at the seat of government.

SEC. 5. The Supreme Court shall consist of three judges, a majority of whom shall be necessary to form a quorum or pronounce a decision; but one or more of said judges may adjourn the court from day to day, or to a day certain, and the Legislative Assembly shall have the power to increase the number of such judges to not less nor more than five.

SEC. 6. The Judges of the Supreme Court shall be elected by the electors of the State at large, as hereinafter provided.

SEC. 7. The term of office of the Judges of the Supreme Court, except as in this Consiitution otherwise provided, shall be six years.

SEC. 8. Three Judges of the Supreme Court shall be elected at the first general election which shall be held under this Constitution, and they shall hold their offices until their successors are elected and qualified, and the one who shall be chief justice shall be determined among themselves by lot. At the first general election which shall be provided for by law, three Judges of the Supreme Court, to succeed those first elected, shall be chosen, and immediately after said election, the judges elected thereat shall be classified by lot, so that one shall hold his office for two years, one for four years, and one for six years. The lot shall be drawn by the Judges, who shall, for that purpose, assemble at the seat of government, and they shall cause the result thereof to be certified to the Secretary of State and filed in his office. The judge having the shortest term to serve, not holding his office by appointment to fill a vacancy, shall be Chief Justice, and shall preside at all terms of the Supreme Court, and in case of his absence, the judge having in like manner the next shortest term to serve shall preside in his stead; and thereafter one judge or more, if the Legislative Assembly shall increase the number to five, shall be chosen every two years, but the term of office of no judge shall be more than six years. And in case there shall be two judges whose term shalls expire at the same time, they shall eecide who shall be Chief Justice by lot.

SEC. 9. There shall be a clerk of the Supreme Court, who shall hold his office, except as herein otherwise provided, tor the term of six years. He shall be elected by the electors at large of the State, and his compensation shall be fixed by law, and his duties prescribed by law, and by the rules of the Supreme Court.

SEC. 10. No person shall be eligible to the office of Judge of the Supreme Court, unless he shall have been admitted to practice law in the Supreme Court of the Territory or State of Montana, be at least thirty years of age, and a citizen of the United States; nor unless he shall have resided in said Territory or State at least two years next preceding his election.

DISTRICT COURTS.

SEC. 11. The district courts shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or right of possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the debt, damage, claim, or demand, exclusive of interest, or the value of the property in controversy exceeds fifty dollars; and in all criminal cases amounting to felony, and all cases of misdemeanors not otherwise provided for; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of actions of divorce and for annullment of marriage, and of all such special actions and proceedings as are not otherwise provided for. And said courts shall have the power of naturalization and to issue papers therefor; they shall have appellate jurisdiction in such cases arising in justices and other inferior courts in their respective districts as may be prescribed by law, and consistent with this Constitution. Their process shall extend to all parts of the State, provided that all actions for the revovery of the possession of, quieting the title to, or for the enforcement of liens upon real property shall be commenced in the county in which the real property, or any part thereof affected by such action or actions, is situated. Said courts and the Judges thereof shall have power also to issue, hear and determine writs of *mandamus*, *quo warranto*, *certiorari*, prohibition, injunction, and other original and remedial writs, and also writs of *habeas corpus*, on petition by, or on behalf of, any person in actual custody in their respective districts. Injunctions, writs of prohibition, and *habeas corpus* may be issued and served on legal holidays and non-judicial days.

SEC. 12. The State shall be divided into judicial districts, in each of which there shall be elected by the electors thereof one judge of the district court therein, whose term of office shall be four years, except as in this Constitution otherwise provided. The judges of the district courts may hold courts for each other, and shall do so when required by law.

SEC. 13. Until otherwise provided by law, said district shall be four in number, and constituted as follows:

First District— The counties of Beaverhead, Madison, Gallatin and Jefferson.
Second District—The counties of Missoula, Deer Lodge and Silver Bow.
Third District—The counties of Lewis and Clarke, Choteau and Meagher.
Fourth District—The counties of Custer, Dawson and Yellowstone.

SEC. 14. The Legislative Assembly may, whenever two-thirds of the members of each house shall concur therein, increase the number of judicial districts and the judges thereof, and divide the State into judicial districts accordingly, taking care that they be formed of compact territory, and be bounded by county lines, but such increase of number or change in the boundaries of districts shall not work the removal of any judge from his office during the term for which he shall have been elected or appointed.

SEC. 15. Writs of error and appeals may be allowed from the decisions of the said district courts to the Supreme Court, under such regulations as may be prescribed by law.

SEC. 16. No person shall be eligible to the office of judge of the district court unless he be at least twenty-five years of age, and a citizen of the United States, and shall have been admitted to practice law in the Supreme Court of the Territory or State of Montana, nor unless he shall have resided in this State or Territory at least two years next preceding his election, and, at the time of his election, be a resident of the district for which he is elected.

SEC. 17. The time of holding courts within said judicial districts shall be as provided by law, but at least two terms of the district court shall be held annually in each county, except in such counties as may be attached for judicial purposes to another county wherein such courts are held. Special terms of said courts may be held under such regulations as may be prescribed by law.

SEC. 18. There shall be a Clerk of the district court in each county wherein a term is held, who shall be elected by the electors of his county. The clerk shall be elected at the same time and for the same term as herein provided for the judges of the district court. The duties and compensation of the district clerk shall as be provided by law.

STATE'S ATTORNEY.

SEC. 19. The first Legislative Assembly that shall be held under this Constitution shall provide for the election of one State's attorney for each organized county of this State, except in case a county shall be attached to another for judicial purposes. He shall have a salary fixed by law that shall not be increased or diminished during his term of office, and shall receive no other compensation for his servicies whatsoever; *Provided*, One-half of such salary shall be paid by the State, and the other by the county or counties in which such attorney may be elected. The State's attorney shall possess all the qualifications required for judges of the district courts, except he need not be more than twenty-one (21) years of age, and the term of such office shall be two years.

COUNTY COURTS.

SEC. 20. There shall be elected in each organized county a county judge, who shall be judge of the county court of said county, whose term of office shall be two years, except as otherwise provided in this Constitution; his salaries and duties, except as otherwise provided in this Constitution, shall be as provided by law; but nothing in this Constitution shall be construed to prevent the Legislative Assembly from fixing different salaries of county judges for the several counties of the State.

SEC. 21. There shall be a clerk of the county court in each county. The Legislative Assembly may provide for the election of such clerk by the people, or it may provide that the duties of such office shall be performed by some other county officer. The duties of such clerk and his compensation shall be prescribed by law.

SEC. 22. County courts shall have original jurisdiction within their respective counties in all matters of probate, settlement of estates of deceased persons, appointment of guardians, conservators, and administrators, and settlement of their accounts, and such other civil and criminal jurisdiction as may be conferred by law: *Provided*, That such courts shall have no jurisdiction in any case where the debt, damage, claim, or value of the property involved, shall exceed one thousand dollars, exclusive of interest, except in cases relating to the estates of deceased or insane persons or minors.

JUSTICES OF THE PEACE.

SEC. 23. There shall be in each organized township or district of each county in the State at least two justices of the peace, who shall be elected by the electors

of the several townships or districts, and who shall hold their offices, except as otherwise provided in this Constitution, for the term of two years. Such courts shall have such original jurisdiction within their respective counties as may be prescribed by law, except as in this Constitution otherwise provided: *Provided*, That they shall not have jurisdiction in any case where the debt, damage, claim, or value of the property involved, exceeds the sum of three hundred dollars.

SEC. 24. Neither the county courts, nor justice's courts, shall have jurisdiction in any case involving the title or right of possession of real property, nor in cases of divorce, nor for annulment of marriage, nor in cases of equity; nor shall they have power to issue writs of *habeas corpus*, *mandamus*, *certiorari*, *quo warranto*, injunction, or prohibition, nor the power of naturalization; nor shall they have jurisdiction in cases of felony, except as examining courts, nor shall criminal cases in said courts be prosecuted by indictment; but said courts shall have such jurisdiction in criminal matters, not of the grade of felony, as may be provided by law. Prosecutions may be by information, or otherwise, as the law may provide.

SEC. 25. County and justices courts shall always be open for the transaction of business, except on legal holidays and non-judicial days.

SEC. 26. Appeals shall be allowed from county and justices courts, in all cases, to the district courts, in such manner and under such regulations as may be prescribed by law.

POLICE AND MUNICIPAL COURTS.

SEC. 27. The Legislative Assembly shall have power to provide for creating such police and municipal courts and magistrates for cities and towns as may be deemed necessary from time to time, who shall have jurisdiction in all cases arising under the ordinances of such cities and towns respectively; such police magistrates may also be constituted *ex-officio* justices of the peace for their respective counties.

MISCELLANEOUS PROVISIONS.

SEC. 28. The Supreme, district, and county courts shall be courts of record.

SEC. 29. Until otherwise provided by law, the Judges of the Supreme and district courts shall fix the times of holding the terms of their respecrive courts.

SEC. 30. All laws relating to courts shall be general and of uniform operation throughout the State, and the organization, jurisdiction, powers, proceedings, and practice of all courts of the same class or grade, so far as regulated by law, and the force and effect of the proceedings, judgments, and decrees of such courts, severally, shall be uniform.

SEC. 31. The style of all process shall be "The State of Montana," and all prosecutions shall be conducted in the name and by the authority of the same.

SEC. 32. There shall be but one form of civil action, and laws and equity may be administered in the same action.

SEC. 33. The Legislative Assembly may provide for the election of all judicial officers at a time different from the election of other officers.

SEC. 34. The Judges of the Supreme, district, and county courts shall severally receive such salary as may be provided by law, consistent with this Constitution, and no such Judge shall accept or receive any compensation, fee, perquisite, or emolument, for or on account of his office, in any form whatever, except such salary: *Provided however*, that Judges of the county courts may accept and receive such fees as may be allowed by the laws of the United States for services rendered thereunder.

SEC. 35. No Judge of the Supreme, district, or county courts shall act or practice as an attorney or counsellor at law in any of the courts of this State during his continuance in office, nor shall the clerk of any such court, during his term of office, be retained, employed, or practice as an attornoy in the court of which he may be a clerk.

SEC. 36. The Supreme Court shall appoint one reporter of its decisions, who shall hold his office for four years, subject to removal by the court, and who shall receive for his services such compensation as may be provided by law. The Legislative Assembly shall provide for the speedy publication of all decisions and opinions of the Supreme Court.

SEC. 37. Judges of the Supreme and district courts shall receive such salaries, payable quarterly by the State, as may be prescribed by law, County Judges shall receive such salary, payable quarterly by the several counties, as may be provided by law. But no salary of any judicial officer shall be increased or diminished during his continuance in office. Until otherwise provided by law, the annual salaries of said judges shall be as follows: The judges of the Supreme Court, thirty-six hundred dollars each; the judges of the district court, three thousand dollars each; the county judges of Beaverhead, Madison, Missoula, Choteau, Meagher, Yellowstone, Dawson and Jefferson counties, twelve hundred dollars each; Deer Lodge and Custer counties, fourteen hundred dollars each; Lewis and Clarke, Silver Bow and Gallatin counties, eighteen hundred dollars each.

SEC. 38. All officers provided for in this article, excepting judges of the Supreme court, who shall reside within the State, shall respectively reside during their term of office in the district, county, township, precinct, city or town for which they may be elected or appointed.

SEC. 39. Vacancies in the office of Judge of the Supreme, district, or county court, or clerk of the Supreme court, shall be filled by appointment of the Governor of the State, and vacancies in the office of State's Attorney, of clerk of the district court, and justices of the peace, shall be filled by appointment of the Board of County Commissioners of the county where such vacancy occurs. A person appointed to fill any such vacancy shall hold his office until the next regular election for such office, and at such election a person shall be chosen to fill the unexpired term of the person previously elected to such office.

SEC. 40. No Supreme, district, or county judge shall hold any other office than the one to which he shall have been elected or appointed, except as provided in this Constitution.

SEC. 41. A cause in the district court may be tried by a judge *pro tempore*, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the cause; and in such case, any order, judgement, or decree, made or rendered therein by such judge *pre tempore*, shall have the same force and effect as if made or rendered by the court, with the regular judge presiding.

ARTICLE VII.

Suffrage and Elections.

SEC. 1. All elections by the people shall be by ballot.

SEC. 2. Every male person, over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all the general elections: First—He shall be a citizen of the United States, or, not being a citizen of the United

States, he shall have declared his intention, according to law, to become such citizen, not less than four months before he offers to vote. Second—He shall have resided in the State six months immediately preceding the election at which he offers to vote, and in the county, town, or precinct such time as may be prescribed by law.

SEC. 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the State, or of the United States; nor while engaged in the navigation of the waters of the State, or of the United States; nor while a student at any institution of learning; nor while kept at any almshouse, or other asylum, at the public expense; nor while confined in any public prison.

SEC. 4. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

SEC. 5. No elector shall be obliged to perform military duty on the days of election, except in time of war or public danger.

SEC. 6, No soldier, seaman, or marine in the army or navy of the United States shall be deemed a resident of this State in consequence of being stationed at any military or naval place within the same.

SEC. 7. No person shall be elected or appointed to any office in this State, civil or military, who is not a citizen of the United States, and who shall not have resided in this State at least one year next before his election or appointment.

SEC. 8. No idiot or insane person shall be entitled to vote at any election in this State.

SEC. 9. The Legislative Assembly shall have the power to pass laws excluding from the rights of suffrage persons convicted of infamous crimes.

SEC. 10. The Legislative Assembly shall pass laws to secure the purity of elections, and guard against abuses of the elective franchise.

SEC. 11. The Legislative Assembly may pass laws allowing women the right to hold any school district office, and vote at any school district election.

SEC. 12. General elections, after the first election, held under this Constitution, shall, until otherwise provided by law, be held on the Tuesday next after the first Monday of November in the even numbered years.

ARTICLE VIII.

State Institutions.

SEC. 1. Educational, reformatory, and penal institutions, and those for the benefit of the insane, blind, deaf, and mute, and such other institutions as the public good may require, shall be established and supported by the State, in such manner as may be prescribed by law.

SEC. 2. The Legislative Assembly shall have no power to change or locate the seat of government of the State, but shall, at its first session, after the adoption of this Constitution, provide by law for submitting the question of the permanent location of the seat of government to the qualified electors of the State, at the general election then next ensuing, and a majority of all the votes upon said question cast at said election shall be necessary to determine the location thereof. Said Legislative Assembly shall also provide that in case there shall be no choice of location at said election, the question of choice between the two places for which the highest number of votes shall have been cast shall be submitted in like manner to

the qualified electors of the State, at the next general election: *Provided*, That until the seat of government shall have been permanently located, as herein provided, the temporary location thereof shall remain at the city of Helena.

SEC. 3. When the seat of government shall have been located, as herein provided, the location thereof shall not thereafter be changed, except by a vote of a majority of all the qualified electors of the State voting on that question at a general election at which the question of the location of the seat of government shall have been submitted by the Legislative Assembly. But no proposition for changing the location of the seat of government shall be submitted to the people oftener than once in four years.

SEC. 4. The Legislative Assembly shall make no appropriations or expenditures for capital buildings or grounds until the seat of government shall have been permanently located, as herein provided, and no such appropriation shall be made prior to the year 1900, unless such proposed appropriations shall have first been submitted at a general election to the qualified electors of the State, and their approval thereof given by a majority of all electors voting at such election.

SEC. 5. It shall be the duty of the Legislative Assembly to make provision, as soon as may be practicable, for a State University, State Asylums, and State Penitentiary, and such other State institutions as may be necessary: *Provided*, That not more than one of such institutions shall be located in any one county in the State, and none of them in the county in which the capitol of the State is located.

SEC. 6. The several counties of the State shall provide, as may be prescribed by law, for those inhabitants, who by reason of age, infirmity, or other misfortune, may have claims upon the sympathy and aid of society.

ARTICLE IX.

Education.

SEC. 1. It shall be the duty of the Legislative Assembly of Montana to establish and maintain a general, uniform, and thorough system of public, free, common schools.

SEC. 2. The public school fund of the State shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted to the State by the general government, known as school lands, and those granted in lieu of such; lands acquired by gift or grant from any person or corporation under any law or grant of the General Government; and of all other grants of land or money made to the State from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates or distributive shares of estates that may escheat to the State; all unclaimed shares and dividends of any corporation incorporated under the laws of the State; and all other grants, gifts, devises, or bequests made to the State for general educational purposes.

SEC. 3. Such public school fund shall forever remain inviolate, guaranteed by the State against loss or diversion, to be invested, so far as possible, in public securities within the State, including school district bonds, issued for the erection of school buildings, under the restrictions to be provided by law.

SEC. 4. The Governor, Superintendent of Public Instruction, Secretary of State, and Attorney General, shall constitute the State Board of Land Commissioners, who shall have the direction, control, and disposition of school lands of the State, under such regulations and restrictions as may be prescribed by law; but no part of such lands shall be disposed of except after appraisal without regard to any

improvements thereon, and at public auction to the highest bidder above the appraised value; nor shall more than one-tenth part of such lands be exposed to sale in any one year.

SEC. 5. The interest on all invested school funds of the State shall be apportioned to the several school districts of the State, in proportion to the namber of children and youth between the ages of five and twenty-one,years; but no district shall be entitled to such distributive share that does not maintain a public free school for at least three months during the year for which distribution shall be made.

SEC. 6. It shall be the duty of the Legislative Assembly to provide by taxation, or otherwise, sufficient means, in connection with the amount received from the general school fund, to maintain a public, free, common school in each organized district in the State, for at least three months in each year.

SEC. 7. The public free schools of the State shall be open to all children and youth between the ages of five and twenty-one years.

SEC. 8. The public school system shall include primary and grammar schools, and such high schools, normal schools, and technical schools, as may be established by the Legislative Assembly, or any municipal or district authority; but the entire revenue derived from the State school fund shall be applied exclusively to the support of primary and grammar schools.

SEC. 9. Neither the Legislative Assembly, nor any county, city, town, or school district, or other public corporation, shall ever make, directly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property, in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, or university, or other literary or scientific institution, controlled in whole or in part by any church, sect or denomination whatever.

SEC. 10. No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the State, either as teacher or student; nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the State; nor shall any person be debarred admission to any of the collegiate departments of the University on account of sex.

SEC. 11. The Legislative Assembly may provide for the election of all school officers, including Regents of the University, at separate elections from those at which other State or county officers are voted for.

SEC. 12. At the first general election provided for by law there shall be elected by the qualified electors of the State, nine Regents of the University, who shall at their first meeting be so classified by lot that three shall hold office for two years, three for four years, and three for six years; and every two years thereafter there shall be elected three Regents, whose term of office shall be six years, except as otherwise provided in this Constitution. The Regents so elected, and their successors, shall constitute a body corporate to be known by the name and style of "The Regents of the University of Montana." Such Regents shall receive no salary, but shall be allowed all actual and necessary expenses incurred in the discharge of their official duties.

SEC. 13. The Regents of the University shall, as soon as practicable and they may deem necessary, elect a President of the University, who shall hold his office for the term of four years, unless before that time he be removed for cause. He shall be *ex-officio* a member of the board, with the privilege of speaking but not voting, except in case of a tie. He shall preside at the meetings of the board, and

be the principal executive officer of the University, and a member of the faculty thereof.

SEC. 14. The board of Regents shall have, under such regulations and restrictions as may be prescribed by law, the general supervision of the University, and the control, direction, and disposition of the lands and moneys granted to the State for University purposes by the General Government, not inconsistent with the terms of the grant; and of all grants, gifts, devises, and bequests or appropriations from the General Government, the State, or from any other source whatever, for the exclusive use and benefit of the University of Montana; and said board shall further provide for the safe and profitable investment of all funds, derived from whatever source, intended for the permanent endowment of said University, under such regulations and restrictions as may be prescribed by law, the State being guarantor against the loss or diversion of any part thereof.

ARTICLE X.

Industrial Resources.

SEC. 1. A Bureau of Industrial Resources shall be established, to be located at the capital of the State, which shall be under the management of a Commissioner, who shall be elected at the first general election, and hold his office for the term of four years, except as otherwise provided in this Constitution.

SEC. 2. The Commissioner of Industrial Resources shall perform such duties and receive such compensation as may be prescribed by law, and it shall be the duty of the Legislative Assembly, at its first session, to prescribe such duties and compensation and to pass such laws as may be necessary for the government, regulation, and support of such bureau.

ARTICLE XI.

Military Affairs.

SEC. 1. The militia of the State of Montana shall consist of all able bodied male citizens of the State between the age of eighteen (18) and forty-five (45) years, except such persons as may be exempted by the laws of the State or of the United States.

SEC. 2, The Legislative Assembly shall provide by law for the organization, equipment, and discipline of the militia. The organization shall conform, as nearly as practicable, to the regulations for the government of the armies of the United States.

SEC. 3. The Legislative Assembly shall provide by law for maintaining the militia by appropriations from the treasury of the State.

SEC. 4. The Legislative Assembly shall provide by law for the safe keeping of the public arms, military records, relics, and banners of the State.

SEC. 5. When the Governor shall, with the consent of the Legislative Assembly, be out of the State in time of war, at the head of any military force thereof, he shall continue Commander-in-Chief of all the military force of the State.

ARTICLE XII.

Revenue and Taxation.

SEC. 1. The Legislative Assembly shall provide such revenue as may be needful by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her, or its property, except as in this article hereinafter otherwise provided. The Legislative Assembly may also impose a license tax, both upon natural persons and upon corporations, other than municipal, doing business in this State.

SEC. 2. The specification of the object and subjects of taxation shall not deprive the Legislative Assembly of the power to require other subjects or objects to be taxed in such manner as may be consistent with the principles of taxation fixed by this Constitution.

SEC. 3. The property of the United States, the State, counties, cities, towns, and other municipal corporations, and public libraries, shall be exempt from taxation.

SEC. 4. Lots with the buildings thereon, when said buildings are used solely for religious worship, or for charitable purposes, also cemeteries not used or held for private or corporate profit, growing crops, live stock under six months old, and all mines and mining claims, both placer and in rock, in place containing or bearing gold, silver, copper, coal, or other valuable mineral deposits, shall be exempt from taxation; *Provided*, That all machinery used in mining, and all property and surface improvements, appurtenant to or upon mining claims, which have a separate and independent value, the value of the surface ground embraced in said claims, and the annual net proceeds of said mining claims, shall be taxed as provided by law.

SEC. 5. The Legislative Assembly may provide that the increase in the value of private lands caused by the planting of hedges, orchards, and forests thereon, shall not, for a limited time, to be fixed by law, be taken into account in assessing such lands for taxation.

SEC. 6. The Legislative Assembly may, in its discretion, exempt by law from taxation other property in addition to that herein specified.

SEC. 7. The Legislative Assembly shall not impose taxes for the purpose of any county, city, town, or other municipal corporations, but may by law invest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purpose of such corporation.

SEC. 8. All taxes levied for State purposes shall be paid into the State Treasury, and no county, city, town, or other municipal corporation, the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes to be levied for State purposes.

SEC. 9. The power to tax corporations or corporate property, both real and personal, shall never be relinquished or suspended, and all corporations in this State, or doing business therein, shall be subject to taxation for State, county, school, municipal, and other purposes, on real and personal property owned or used by them, and not by this Constitution exempted from taxation within the territorial limits of the authority levying the tax.

SEC. 10. The rate of taxation of real and personal property, for State purposes, shall never exceed three (3) mills on each dollar of valuation; and whenever the taxable property in the State shall amount to one hundred million dollars ($100,000,000) the rate shall not exceed two (2) mills on each dollar of valuation; and whenever the taxable property in the State shall amount to three hundred million dollars ($300,000,000) the rate shall never thereafter exceed one (1) mill on each

dollar of valuation, unless a proposition to increase such rate, specifying the rate proposed, and the time during which the same shall be levied, shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it at such election.

SEC. 11. The Treasurer shall keep a separate account of each fund in his hands, and shall at the end of each quarter of the fiscal year report to the Governor in writing, under oath, the amount of all monies in his hands to the credit of ev ry such fund, and the place or places where the same is kept or deposited, and the number and amount of every warrant paid or redeemed by him during the quarter. Swearing falsely to any such report shall be deemed perjury. The Governor shall cause every such report to be immediately published in at least one newspaper printed at the seat of government, and otherwise as the Legislative Assembly may require. The Legislative Assembly may provide by law further regulations for the safe keeping and management of the public funds in the hands of the Treasurer; but, notwithstanding any such regulation, the Treasurer and his sureties shall in all cases be held responsible therefor.

SEC. 12. The making of profit directly or indirectly out of State, county, city, town, township, or school district money, or using the same for any purpose not authorized by law, by any public officer, shall be deemed a felony, and shall be punished as provided by law.

SEC. 13. No appropriation shall be made, nor any expenditure authorized by the Legislative Assembly, whereby the expenditure of the State during any fiscal year shall exceed the total tax then provided for by law, and applicable to such appropriation or expenditure, unless the Legislative Assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rates allowed in Section ten (10) of this article to pay such appropriation or expenditure within such fiscal year. This provision shall not apply to appropriations or expenditure to suppress insurrection, defend the State, or assist in defending the United States in time of war.

SEC. 14. Private property shall not be taken or sold for the corporate debts of municipal corporations.

SEC. 15. There shall be a State Board of Equalization; consisting of the Governor, Secretary of State, Attorney General, State Auditor, and State Treasurer, whose duty it shall be to equalize the valuation of the taxable property of the several counties of the State, for the purposes of taxation. The Board of counth commissioners for the several counties of the Stateshall constitute Boards of Equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purposes of taxation. Said State and County Boards of Equalization are hereby authorized and empowered, under such rules of notice as the county boards may prescribe, as to the county assessments, and under such rules of notice as the State Board may prescribe, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the properte containd in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll.

SEC. 16. All property, except as hereinafter in this section provided, shall be assessed in the county, city, town, township, or school district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this State, shall be assessed by the State Board of Equalization at their actual value, and the same shall be apportioned to the counties, cities, towns, townships, and school districts in

which such railroads are located, in the proportion to the number of miles of railway laid in such counties, cities, towns, townships, and school districts.

SEC. 17. The word property, as used in this article, is hereby declared to include monies, credits, bonds, stocks, franchises, and all matters and things (real, personal and mixed) capable of private ownership; but this shall not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation, represented by such stocks, has been taxed.

SEC. 18. The Legislative Assembly shall pass all laws necessary to carry out the provisions of this article.

ARTICLE XIII.

Public Indebtedness.

SEC. 1. Neither the State, nor any county, city, town, township, or school district, shall lend or pledge the credit or faith thereof, directly or indirectly, in any manner to or in aid of any person, company, or corporation, public or private, for any amount, or for any purpose whatever, or become responsible for any debt, contract, or liability of any person, company, or corporation, public or private, in or out of the State, except as otherwise provided in this Constitution.

SEC. 2. Neither the State, nor any county, city, town, township, or school district, shall make any donation, or grant to by subsidy or otherwise, or in aid of, or become a subscriber to, or a shareholder in, any corporation, or company, or a joint owner with any person, company, or corporation, public or private, in or out of the State, except as to such ownership as may accrue to the State by escheat, or by forfeiture, by operation or provision of law, and except as to such ownership as may accrue to the State, or to any county, city, town, township, or school district, or to either or any of them jointly with any person, company, or corporation, by forfeiture or sale of real estate for non-payment of taxes, or by donation or devise for public use, or by purchase by or on behalf of any or either of them, jointly with any or either of them under execution, in cases of fines, penalties, or forfeiture of recognizances, breach of condition of official bonds, or of bond to secure public monies, or the performance of any contract in which they or any of them may be jointly or severally interested.

SEC. 3. The Legislative Assembly shall not in any manner create any debt or debts, liability or liabilities, which shall singly, or in the aggregate with any previous debt or liability, exceed the sum of One Hundred Thousand Dollars, ($100,000) except in case of war, to repel invasion, or suppress insurrection, unless the same shall be authorized by law for some single object or work, to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also for the payment and discharge of the principal of such debt or liability within twenty (20) years of the time of the contracting thereof, and shall be irrepealable until such time as the principal and interest thereon shall be paid and discharged; but no such law shall take effect until at a general election it shall have been submitted to the people, and shall have received a majority of the votes cast for and against it at such election, and all monies raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created; and such law shall be published in at least one (1) newspaper in each county, if one be published therein, throughout the State, for three (3) months next pre-

ceding the election at which it is submitted to the people. The Legislative Assembly may at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same.

Sec. 4. No county shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per cent. of the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness, and no county shall incur any indebtedness or liability for any single purpose to an amount exceeding $10,000, without the approval of a majority of the electors thereof, voting at an election to be held for that purpose.

Sec. 5. No city, town, township, or school district shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding three (3) per cent. of the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness.

ARTICLE XIV.

Municipal Corporations and Officers.

SECTION 1. The several counties of the Territory of Montana, as they shall exist at the time of the admission of the State into the Union, are hereby declared to be the counties of the State, until otherwise established or changed by law.

SEC. 2. The Legislative Assemble shall have no power to remove the county seat of any county, but the same shall be provided for by General law; and no county seat shall be removed, unless a majority of the qualified electors of the county, voting on a proposition at a General election, vote therefor; but no such proposition shall be submitted oftener than once in four years, and no person shall vote on such proposition who shall not have resided in the county six months, and in the election precinct ninety days next preceding such election.

SEC. 3. That the Legislative Assembly shall provide by general law the manner in which a part of any county may be stricken from such county and added to another county, or formed into a new county.

SEC 4. In all cases of the establishment of a new county, it shall be held to pay its ratable proportion of all then existing liabilities of the county or counties from which it is formed, less the ratable proportion of the value of the county buildings and property of the county or counties from which it is formed.

SEC. 5. When any part of a county is stricken from one or more counties and attached to another, the county to which such part is attached shall be liable to pay the ratable proportion of such part of all then existing liabilities of the county or counties from which such part is taken, less the ratable proportion of the value of the county buildings and property of the county or counties from which such part is taken.

SEC. 6. When any county formed from contiguous territory taken from older counties, or when any county to which territory shall be added taken from an adjoining county, shall fail to pay the proportion of indebtedness of such territory to the county or counties from which it is taken, then it may be lawful for the county from which such territory has been taken to recover from the county so failing to pay, by action at law, the proportion of indebtedness for which it shall be liable, as provided in the two preceding sections.

Sec. 7. The Legislative Assembly shall provide by law for the sub-division of the several counties of the State into townships, districts, or precincts, of convenient number and size.

Sec. 8. The Legislative Assembly shall provide by general laws for the organization and classification of cities and towns. The number of such classes shall not exceed four; and the power of each class shall be limited by general laws, so that all such municipal corporations of the same class shall possess the same powers and be subject to the same restrictions. The Legislative Assembly shall also make provision, by general law, whereby any city, town or village, existing by virtue of any special or local law of the Territory, may elect to become subject to and governed by the general law relating to such corporations.

COUNTY OFFICERS.

Sec. 9. In each county there shall be elected four county commissioners, who shall compose the board of county commissioners, and who with the county Judge of the county shall hold sessions for the transaction of county business, as provided by law, any three of whom shall constitute a quorum for the transaction of business. The county Judge shall be chairman of the board of county commissioners.

Sec. 10. The term of office of the county Judge shall be two years, and of the county commissioners four years, except as otherwise provided for in this Constitution; but the Legislative Assembly shall so arrange the terms of the county commissioners elected at the first general election provided for by law that two county commissioners shall be elected every two years thereafter. A vacancy in the board of county commissioners shall be filled by appointment of the Governor.

Sec. 11. The Legislative Assembly shall provide by law for the election of the following officers: One county clerk, who shall be clerk of the Board of county commissioners, and *ex-officio* recorder of deeds; one sheriff; one treasurer, who shall be collector of taxes; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of two years, except as in this Constitution otherwise provided. Vacancies in all county, township, and precinct offices, except that of county commissioner, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election.

Sec. 12. No person shall be eligible to any county office unless he be a qualified elector, nor unless he shall have resided in the county one year next preceding his election.

Sec. 13. The Legislative Assembly shall provide for the election or appointment of such other county, township, precinct, and municipal officers as public convenience may require, and their terms of office shall be as prescribed by law, not in any case to exceed two years, except as in this Constitution otherwise provided.

Sec. 14. The compensation of all county, township, and precinct officers, except as in this Constitution otherwise provided, shall be as prescribed by law.

ARTICLE XV.

Corporations, Other than Municipal.

Sec. 1. All existing charters, or grants of special or exclusive privileges, under which the corporators or grantees shall not have organized or commenced business in good faith at the time of the adoption of this Constitution, shall thereafter have no validity.

Sec. 2. No charter of incorporations shall be granted, extended, changed, or amended by special law, except for such municipal, charitable, educational, penal, or reformatory corporations as are or may be under the control of the State; but the Legislative Assembly shall provide by general law for the organization of corporations hereafter to be created. *Provided*, That any such law shall be subject to future repeal or alteration by the Legislative Assembly.

Sec. 3. The Legislative Assembly shall have the power to alter, revoke, or annul any charter of incorporation existing and revokable at the time of the adoption of this Constitution, whenever in its opinion it may be injurious to the citizens of the State, in such manner, however, that no injustice shall be done to the corporators.

Sec. 4. The Legislative Assembly shall provide by law that in all elections for directors or managers of incorporated companies every stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares ofstock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner.

Sec. 5. All railroads shall be public highways, and all railroad, transportation, and express companies shall be common carriers, and subject to legislative control, and the Legislative Assembly shall have power to regulate and control by law the rates of charges for the transportation of passengers and freight by such companies as common carriers from one point to another in the State. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this State, and to connect at the State line with railroads of other States and Territories. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad.

Sec, 6. No railroad corporation, express, or other transportation company, or the lessees or managers thereof, shall consolidate its stock property or franchises with any other railroad corporation, express, or other transportation company owning or having under its control a parallel or competing line; neither shall it in any manner unite its business or earnings with the business or earnings of nny other railroad corporation.

Sec. 7. All individuals, associations, and corporations shall have equal rights to have persons or property transported on and over any railroad, transportation, or express route in this State. No discrimination in charges, or facilities for transportation of freight or passengers of the same class, shall be made by any railroad, or transportation, or express company between persons or places within this State; but excursion or commutation tickets may be issued and sold at special rates, provided such rates are the same to all persons. No railroad, or transportation, or express company shall be allowed to charge, collect, or receive, under penalties which the Legislative Assembly shall prescribe, any greater charge or toll for the transportation of freight or passengers to any place or station upon its route or line than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this State. No railroad, express, or transportation company, nor any lessee, manager, or other employe thereof, shall give any preference to any individual, association, or corporation, in furnishing cars or motive power or for the transportation of money, or other express matter.

Sec. 8. No railroad, express, or other transportation company, in existence at the time of the adoption of this Constitution, shall have the benefit of any future legislation, without first filing in the office of Secretary of State an acceptance of the provisions of this Constitution in binding form.

Sec. 9. The right of eminent domain shall never be abridged, nor so construed as to prevent the Legislative Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals; and the police powers of the State shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well-being of the State.

Sec. 10. No corporation shall issue stocks or bonds, except for labor done, services performed, or money and property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock, first obtained at a meeting held after at least thirty days' notice given in pursuance of law.

Sec. 11. No foreign corporation shall do any business in this State without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served. And no company or corporation formed under the laws of any other country, State, or Territory, shall have or be allowed te exercise or enjoy within this State any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of this State.

Sec. 12. No street or other railroad shall be constructed within any city, town or incorporated village, without the consent of the local authorities having the control of the street or highway proposed to be occupied by such street or other railroad.

Sec. 13. The Legislative Assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the State, a new liability in respect to transactions or considerations already past.

Sec. 14. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph or telephone within this State, and connect the same with other lines; and the Legislative Assembly shall by general law of uniform operation provide reasonable regulations to give full effect to this section. No telegraph or telephone company shall consolidate with or hold a controlling interest in the stock or bonds of any other telegraph or telephone company owning or having the control of a competing line, or acquire by purchase or otherwise any other competing line of telegraph or telephone.

Sec. 15. If any railroad, telegraph, express, or other corporation, organized under any of the laws of this State, shall consolidate, by sale or otherwise, with any railroad, telegraph, express, or other corporation organized under any of the laws of any other State or Territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this State shall retain jurisdiction over that part of the corporate property within the limits of the State, in all matters that may arise, if said consolidation had not taken place.

Sec. 16. It shall be unlawful for any person, company, or corporation to require of its servants or employes, as a condition of their employment or otherwise,

any contract or agreement whereby such person, company, or corporation, shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employes while in the service of such person, company, or corporation, by reason of the negligence of such person, company, or corporation, or the agents or employes thereof; and such contracts shall be absolutely null and void.

Sec. 17. The Legislative Assembly shall not pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or property held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

Sec. 18. The term "corporation," as used in this article, shall be held and construed to include all associations and joint stock companies having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue, and shall be subject to be sued in all courts in like cases as natural persons, subject to such regulations and conditions as may be prescribed by law.

Sec. 19. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable in any amount over or above the amount of stock owned by him.

ARTICLE XVI.

Miscellaneous Subjects and Future Amendments.

Sec. 1. The Legislative Assembly shall have no power to authorize lotteries, or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery, or gift enterprise tickets in this State.

Sec. 2. The Legislative Assembly shall enact suitable laws to prevent the destruction by fire, from locomotives on railroads, or from any other cause, and to keep in good preservation the grasses and forests upon lands of the State or upon lands of the public domain, the control of which may be conferred by Congress upon this State.

Sec. 3. The Legislative Assembly shall enact liberal homestead and exemption laws.

Sec. 4. Members of the Legislative Assembly, and all officers, executive, ministerial or judicial, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath or affirmation, to-wit: "I do solemnly swear (or affirm) that I will support, protect and defend the Constitution of the United States and of the State of Montana, and that I will faithfully discharge the duties of the office of ———— according to law and the best of my abilities." And no other oath, declaration, or test shall be required as a qualification for any office or public trust.

Sec. 5. All officers whose election or appointment is not provided for by the Constitution, and all officers whose office and duties may be hereafter created by law, shall be elected or appointed as may be provided by law.

Sec. 6. No perpetuities shall be allowed, except for charitable purposes.

Sec. 7, All county officers shall keep their offices at the county seats of their respective counties.

Sec. 8. All officers shall hold their offices until their successors are elected and qualified. The term of all officers elected, except as otherwise provided in

this Constitution, shall commence on the first Monday of January next following their election.

Sec. 9. In the disposition of the public lands granted by the United States to this State, preference shall always be given to actual settlers, and the Legislative Assembly shall provide by law for carrying this section into effect.

Sec. 10. No railroad, or other transportation company, and no agent, officer, or employe thereof, shall issue, or give, or offer, either directly or indirectly, to any member of the Legislative Assembly, or to any executive, judicial, or ministerial officer of this State, or of any county, district, township, municipality, or other division thereof, any gratuitous transportation over or upon, or any pass or free ticket for passage over or upon any route or line, or part thereof, of such company, or make, or consent to, or direct any contract or arrangement by which such officers, or any of them, shall be transported or conveyed over, or allowed to travel upon sueh route or line, or any part thereof, at any less rate, or for any less compensation than is charged the public generally; and no member of the Legislative Assembly, and no such officer as above mentioned, shall accept or receive, or use, while he is a candidate for office, or while he continues in office, or within three months after he ceases to be in office, any pass or free ticket from any railroad or transportation company, or make or consent to any contract or arrangement by which he or any of his family or employes shall be transported or conveyed by such company gratuitously, or at any different or lower rate or charge from that required of the public generally. That any railroad, or other transportation corporation or company, violating any provision hereof, shall forfeit to the State one thousand dollars for each and every violation hereof, to be recovered by an action at law; and any officer herein mentioned, who shall violate any provision hereof, shall forfeit his office and all the emoluments thereof.

Sec. 11. If the Legislative Assembly shall at any time abolish county courts, it shall at the same session provide what number of persons shall comprise the board of county commissioners of the several counties of this State, and the manner of selecting the chairman thereof.

FUTURE AMENDMENTS.

Sec. 12. The Legislative Assembly may at any time, by a vote of a majority of the members elected to each house, recommend to the electors of the State, to vote at the next general election for or against a convention to revise, alter, and amend this Constitution; and if a majority of those voting on the question shall declare in favor of such convention, the Legislative Assembly shall at its next session provide for the calling thereof. The number of members of the Convention shall be twice that of the Senate, and they shall be elected in the same manner, at the same places, and in the same districts. The Legislative Assembly shall, in the act calling the Convention, designate the day, hour, and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the necessary expenses of the Convention. Before proceeding, the members shall take an oath to support the Constitution of the United States, and of the State of Montana, and to faithfully discharge their duties as members of the Convention. The qualifications of members shall be the same as of members of the Senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the Legislative Assembly. Said Convention shall meet within three months after such election, and prepare such revisions, alterations, or amendments to the Constitution as may be deemed necessary, which shall be submitted to the electors for their ratification or rejection, at an election appointed by the Convention for that

purpose, not less than two, nor more than six months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration, or amendment shall take effect.

Sec. 13. Any amendments to this Constitution may be proposed in either house of the Legislative Assembly; and if the same shall be voted for by a majority of the members elected to each house, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals; and the Secretary of State shall cause the said amendment or amendments to be published in full in at least one newspaper in each county (if such there be) for three months previous to the next general election for members to the Legislative Assembly; and at said election the said amendment or amendments shall be submitted to the qualified electors of the State for their approval or rejection, and such as are approved by a majority of those voting thereon, shall become part of the Constitution. Should more amendments than one be submitted at the same election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately.

ARTICLE XVII.

Schedule.

Sec. 1. That no inconvenience may arise from a change of Territorial government to a permanent State government, it is declared that all writs, actions, prosecutions, claims, and rights of individuals and of bodies corporate, shall continue as if no change of government had taken place; and all processes which may, before the organization of the judicial department under this Constitution, be issued under the authority of the Territory of Montana, shall be as valid as if issued in the name of the State.

Sec. 2. All laws now in force in the Territory of Montana, which are not repugnant to this Constitution, shall remaid in force until they expire by their own limitations, or be altered or repealed by the Legislative Assembly.

Sec. 3. All fines, penalties, forfeitures, and escheats accruing to the Territory of Montana shall accrue to the use of the State.

Sec. 4. All recognizances, bonds, obligations, or other undertakings heretofore taken, or which may be taken before the organization of the judicial department under this Constitution, shall remain valid, and shall pass over to, and may be prosecuted in the name of the State; all bonds, obligations, or other undertakings executed to this Territory, or to any officer in his official capacity, shall pass over to the proper State authority, and to their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly; all criminal prosecutions and penal actions which have arisen, or may arise before the organization of the judicial department, under this Constitution, or which shall then be pending, may be prosecuted to judgment and execution in the name of the State.

Sec. 5. That all property, real and personal, and monies, credits, claims and choses in action, belonging to the Territory of Montana, at the time of the adoption of this Constitution, shall be vested in and become the property of the State of Montana. And all outstanding obligations of the Territory at the time of the adoption of this Constitution shall be assumed by the State.

Sec. 6. The Legislative Assembly shall pass all necessary laws to carry into effect the povisions of this Constitution.

Sec. 7. Whenever any two of the Judges of the Supreme Court of the State, elected under the provisions of this Constitution, shall have qualified in their offices, the causes then pending in the Supreme Court of the Territory, and the papers, records, and proceedings of said Court, and the seal and other property pertaining thereto shall pass into the jurisdiction and possession of the Supreme Court of the State; and until so superseded, the Supreme Court of the Territory, and the Judges thereof, shall continue with like powers and jurisdiction, as if this Constitution had not been adopted. Whenever the Judge of the District Court of any district elected under the provisions of this Constitution shall have qualified in his office, the several causes then pending in the District Court of the Territory within any county in such district, and the records, papers, and proceedings of said District Court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the District Court of the State for such county; and until the District Courts of this Territory shall be superseded in the manner aforesaid, the said District Courts and the Judges thereof shall continue with the same jurisdiction and power to be exercised in the same Judicial Districts respectively as heretofore constituted under the laws of the Territory.

Sec. 8. Until otherwise provided by law, the seals now in use in the Supreme and District Courts of this Territory are hereby declared to be the seals of the Supreme and District Courts, respectively, of the State.

Sec. 9. Whenever this Constitution shall go into effect, the books, records, papers, and proceedings of the Probate Court in each county, and all causes and matters of administration and other matters pending therein, shall pass into the jurisdiction and possession of the County Court of the same county, and the said County Court shall proceed to final decree or judgment, order or other determination in the said several matters and causes as the said Probate Court might have done if this Constitution had not been adopted. And until the election and qualification of the Judges of the County Courts provided for in this Constitution, the Probate Judges shall act as the Judges of the County Courts within their respective counties, and the seal of the Probate Court in each county shall be the seal of the County Court therein until the said court shall have procured a proper seal.

Sec. 10. The terms "Probate Court" or Probate Judge," whenever occurin in the Statutes of Montana Territory, shall, after this Constitution goes into effec, be held to apply to the County Court or County Judge.

Sec. 11. All territorial, county, and precinct officers, who may be in office at the time this Constitution takes effect, whether holding their offices under the authority of the United States, or of the Territory, shall hold and exercise their respective offices, and perform the duties thereof as prescribed in this Constitution until their successors shall be elected and qualified in accordance with the provisions of this Constitution, and official bonds of all such officers shall continue in full force and effect, as though this Constitution had not been adopted; and such officers for their terms of service, under this Constitution, shall receive the same salaries and compensation as is by this Constitution or by the laws of the Territory provided for like officers.

Sec. 12. This Constitution shall take effect and be in full force immediately upon the admission of the Territory as a State.

Sec. 13. Immediately upon the admission of the Territory as a State, the Governor of the Territory, or in case of his absence or failure to act, the Secretary of the Territory, or in case of his absence or failure to act, the President of

this Convention, shall issue a proclamation, which shall be published, and a copy thereof mailed to the Chairman of the Board of County Commissioners of each county, calling an election by the people of all State, district, county, township, and other officers created and made elective by this Constitution, and fixing a day for such election, which shall not be less than forty days after the date of such proclamation, nor more than ninety days after the admission of the Territory as a State.

Sec. 14. The Board of Commissioners of the several counties shall thereupon order such election for said day, and shall cause notice thereof to be given in the manner and for the length of time provided by the laws of the Territory in cases of general elections for Delegates to Congress and county and other officers. Every qualified elector of the Territory, at the date of said election, shall be entitled to vote thereat. Said election shall be conducted in all respects in the same manner as provided by the laws of the Territory for general elections, and the returns thereof shall be made and canvassed in the same manner and by the same authority as provided in cases of such general election; but returns for all State and district officers, and members of the Legislative Assembly, shall be made to the canvassing board hereinafter provided for.

Sec. 15. The Governor, Secretary, Auditor, and Attorney General of the Territory, and the President of this Convention, or a majority of them, shall constitute a Board of Canvassers to canvass the vote at such elections for all State and District officers and members of the Legislative Assembly. The said board shall assemble at the seat of government of the Territory on the thirtieth day after the day of such election (or on the following day if such day fall on Sunday,) and proceed to canvass the votes for all State and district officers and members of the Legislative Assembly in the manner provided by the laws of the Territory for canvassing the vote for Delegate to Congress, and they shall issue certificates of election to the persons found to be elected to said offices severally, and shall make and file with the Secretary of the Territory an abstract, certified by them, of the number of votes cast for each person for each of said offices and of the total number of votes cast in each county.

Sec. 16. The canvassing boards of the several counties shall issue certificates of election to the several persons found by them to have been elected to the several county and township offices.

Sec. 17. All officers elected at such election shall, within thirty days after they have been declared elected, take the oath required by this Constitution, and give the same bond required by the law of the Territory to be given in case of like officers of the Territory, district, or county, and shall thereupon enter upon the duties of their respective offices; but the Legislative Assembly may require by law all such officers to give other or further bonds as a condition of their continuance in office.

Sec. 18. All officers elected at said election shall hold their offices until the Legislative Assembly shall provide by law, in accordance with this Constitution, for the election of their successors, and until such successors shall be elected and qualified.

Sec. 19. The Governor elect of the State, immediately upon his qualifying and entering upon the duties of his office, shall issue his proclamation convening the Legislative Assembly of the State at the seat of government, on a day to be named in said proclamation, and which shall not be less than thirty nor more than sixty days after the date of such proclamation.

Done in open Convention, at the City of Helena in the Territory of Montana, this ninth day of February in the year of our Lord one thousand eight hundred and eighty-four.

WILLIAM A. CLARK, PRESIDENT,

JOAQUIN ABASCAL,
JOSEPH A. BROWNE,
MATTHEW CARROLL,
JOHN B. CATLIN,
WILLIAM W. DIXON,
SAMUEL R. DOUGLASS,
RICHARD A. EDDY,
JAMES FERGUS,
WILLIAM H. HUNT, JR.,
H. S. HOWELL,
SAMUEL W. LANGHORNE,
WASHINGTON J. McCORMICK,
NATHANIEL MERRIMAN,
J. F. McCLINTOCK,
F. D. PEASE,
F. M. PROCTOR,
ROBERT B. SMITH,
GEORGE STEELL,
JOSEPH K. TOOLE,
WILLIAM VAN GASKEN,
ANDREW F. BURLEIGH,
TIMOTHY E. COLLINS,
JAMES ED. CALLAWAY,
WALTER COOPER,
MARCUS DALY,
GEORGE O. EATON,
ED. F. FERRIS,
F. L. GREENE,
CORNELIUS HEDGES,
WILLIAM B. HUNDLEY,
FRANCIS W. HASTINGS MEDHURST
EDWARD McSORLEY,
JAMES H. MILLS,
THOMAS L. NAPTON,
WILLIAM V. PEMBERTON,
THOMAS C. POWER,
CHARLES W. SAVAGE,
W. J. STEPHENS,
ROBERT P. VIVION,
E. B. WATERBURY.

ORDINANCES.

Be it ordained by the Convention assembled to form a Constitution for the State of Montana, in behalf of and by the authority of the people of the Territory of Montana:

FIRST—That an election shall be held throughout the Territory of Montana on the day of the general election in November, A. D. 1884, for the ratification or rejection of the Constitution framed and adopted by this Convention.

SECOND—At said election the Constitution framed and adopted by this Convention shall be submitted to the people of the Territory for their ratification or rejection, and all persons who are then qualified electors under the laws of this Territory, shall be qualified to vote upon the ratification or rejection thereof.

THIRD—Said election shall be held at the several places in the several wards and precincts throughout the Territory appointed for the holding of elections under the laws of this Territory, and shall be conducted in the manner prescribed by the laws of this Territory regulating elections. The judges and clerks of such general election, in each of said wards and precincts, shall act as judges and clerks of said election.

FOURTH—Each elector voting at said election for Delegate to Congress and other territorial, district, county, and precinct officers, shall have written or printed upon the ticket he may deposit in the ballot-box the words "For the Constitution," or "Against the Constitution," or other equivalent words.

FIFTH—The votes cast at said election for adoption or rejection of the Constitution shall be canvassed at the time and in the manner prescribed by the laws of the Territory of Montana for canvassing the votes for the officers voted for at such election, and the returns of said election shall be made to the Secretary of the Territory; and the Governor, the Secretary, Auditor, and Attorney General of the Territory, and the President of this Convention, or a majority of them, shall constitute a Board of Canvassers, who shall meet at the office of the Secretary of the Territory, on the thirtieth day after the election, and canvass the votes so cast and declare the result.

SIXTH—If, when all the votes for or against the adoption of this Constitution have been canvassed in the manner aforesaid, it shall appear that this Constitution has been adopted by a majority of all the votes cast, such Constitution shall then be submitted to the Congress of the United States in the manner following, that is to say:—A committee of ten, elected by this Convention, and of which the President of this Convention shall be one, the Governor of the Territory shall be one, and the Delegate in Congress another, is hereby directed to present a memorial or petition adopted by this Constitutional Convention to Congress, setting forth the adoption of this Constitution, and praying for the admission of the Territory, as a State, into the Union; and that said committee shall then present duplicate duly

attested copies of this Constitution, and of such petition or memorial to the President of the United States in person, at Washington, with the request that he lay the same, with such recommendation as may to him seem wise in the premises, before the Congress of the United States.

And be it further ordained:—

First—That perfect toleration of religious sentiment shall be secured, and no inhabitant of the State shall ever be molested in person or property on account of his mode of religious worship.

Second—That the people inhabiting the Territory of Montana, by their representatives in said Convention assembled, do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposal of the United States; that the lands belonging to the citizens of the United States, residing without said State, shall never be taxed higher than the lands belonging to residents thereof; and that no taxes shall be imposed by the State on lands or property therein belonging to, or which may hereafter be purchased by the United States.

Third—That this ordinance shall be irrevocable, without the consent of the United States and the people of the State of Montana.

Fourth—That in behalf of the people of Montana, we, in convention assembled, do adopt the Constitution of the United States.

MEMORIAL.

To the Honorable, the President of the United States, and the Speaker of the House of Representatives:

Your memorialists, the people of Montana Territory, through their Representatives in Convention assembled, respectfully represent:

That, since the organization of the Territory of Montana, we have cheerfully yielded obedience to the laws of the United States and recognize the right of Congress to make all needful rules and regulations respecting the Territories;

That we now disclaim any purpose of disloyal action, but, renewing our fealty to the Constitution of the United States, and recalling to mind the right of the people to peacefully assemble and by petition represent their grievances to Congress, do further represent:

That the policy which has so long prevailed of sending strangers to rule over us and fill our offices has become distasteful to us, and is wholly unsuited to our present condition and the growing importance of the diversified interests of our country;

That within the past few years our population and resources have been largely augmented, whereby the proper administration of our laws demands a more perfect and comprehensive system of government than can ever be attained under our territorial organization;

That in order to enlarge our liberties, secure a closer connection with the American Union, and for the establishment and maintenance of a better government, your memorialists, with the consent of the Legislative Assembly, have met in convention and formed a Constitution, republican in form, for the State of Montana, and herewith present a certified copy thereof for your approval; and if, upon consideration of the same, you find it unobjectionable in substance and form, your memorialists pray that the Territory of Montana be speedily admitted into the Union of the United States thereunder, and your memorialists will ever pray.

AN ADDRESS

TO

THE VOTERS

OF THE

TERRITORY OF MONTANA.

The Delegates of the people of the Territory of Montana, in Convention assembled to frame a Constitution for the future State, having completed their labors, present to the Electors for their ratification the annexed Constitution, to the most important features of which we invite your attention.

Every interest we have imperatively demands that our present dependent condition of territorial servitude, little better than the colonial system our forefathers overthrew by revolution, be abandoned. During the past five years our population, material prosperity, and various sources of wealth, have been so augmented, that we have keenly felt our present system of government to be wholly incommensurate with our wants and growing necessities, and this consideration has impelled us to ask and, as we have the right, to demand that inalienable right of freemen, the privilege of local self government. The longer this is delayed, the longer our liberty, permanent prosperity, and contentment are circumscribed. To secure such a stable government as is conformable with this idea and efficient and economic methods, a State Constitution is essential.

You are reminded of the many varied matters which we have been obliged to consider, and of the difficulties encountered in the preparation of this Constitution. Upon some of its provisions a wide difference of opinion prevailed at one time, but earnest discussion and careful consideration ultimately resulted in an almost unanimous adoption, there being but one dissenting voice on the final vote.

While it may appear that some legislation has crept into our work, yet it must not be forgotten that experience has demonstrated the fact that the wide demands of State require certain, and, perhaps, manifold restrictions upon legislative bodies, and the only way to reach them is to embody such restrictions in the Constitution itself.

Declaration of Rights.

This article is pregnant with salutary declarations. It guarantees perfect freedom and toleration, without discrimination on account of religion, but such does not extend to or include the practice of polygamy. It was deemed prudent to leave no room for misconstruction upon this relic of barbarism. All felonies are required to be prosecuted by indictment.

Our present grand jury system is retained, with this wholesome modification, i. e.: It shall consist of twelve men, nine of whom may find a "true bill." In some States, grand juries have proved an inefficient method for bringing guilty persons to justice, and they have tried the experiment of abolishing them. The same right is reserved to the Legislature to abolish the grand jury system, substituting another method, if wise and expedient so to do. Two-thirds of a jury may render a verdict in civil causes. This practice, although a departure from the common law, has been tried in several States with excellent results. This provision will prevent many mistrials and hung juries, and very materially lessen the expense of the administration of justice, without any corresponding disadvantages to litigants.

Ample provision is made for the protection of private property, and, whenever taken for public use, just compensation is secured by reference to a jury, when required by the owner, and, until the same shall have been paid to the owner or into court, no authority exists to divert the proprietary rights of the owner. Whether the use to be made of such property is public or not, is always a judicial question, without regard to any legislative assertion concerning the same.

Legislative Department.

State Senators are elected for four years, Representatives for two years, and such provisions are made so that the Senate shall be changed biennially. Short sessions have proven an incentive to greater industry, hence the limitation of forty days, in all sessions after the first, which shall not exceed sixty days. No special law can ever be passed, when a general one could be made applicable, and appropriations to denminational or sectarian institutions are prohibited. Neither the faith of the State, or of any county, can be pledged to contract or pay any debt for railroad purposes, nor can any liability or obligation of any person, or corporation, be extinguished, except by payment into the proper treasury.

Executive Department.

This department of government is made to consist of a Governor, Lieutenant-Governor, Secretary of State, State Auditor, State Treasurer, Attorney General, and Superintendent of Public Instruction, whose tenure of office is two years. Moderate salaries, scarcely commensurate with the duties and responsibilities of the office, are provided for, but the judgment of the Convention was that, for at least a number of years, the salaries fixed were adequate. All appointments to office by the Governor must be with the advice and consent of the Senate. In order to more effectually regulate the subject of pardons, provision is made for a board, to be known as the "Board of Pardons," consisting of the Governor, Secretary of State, and Attorney General, who are invested with power to remit fines and forfeitures, and to grant commutations and pardons, after conviction, either absolutely or upon such terms and conditions as they may deem proper. To prevent imposition, all hearings before the Board are required to be in open session, after due publication of the time and place of such session. Provision is made for calling extraordinary

sessions of the Legislature by the Governor, but when such a call is made, the purpose of the session is required to be stated in the proclamation of the Governor, and no other subject of legislation than that stated in the call can be considered by the Legislature.

Judicial Department.

The present judicial system, with which all the Territories are inflicted, is inherently and radically wrong and never did, nor can it, adequately meet the demands of the people. Under our present arrangement, the Supreme Court is composed of three judges, who are also the judges of the several District Courts. While sitting as a Supreme Court, the District Judge who tried a case in the court below is called upon to review his own decision. The manifest injustice of this is at once apparent. It is calculated to, and does beget a lack of confidence in judicial proceedings, and brings courts into contempt. Honest judges and lawyers are alike embarrassed in such a dilemma. The present system is manifestly wrong again; by it the people have no voice in selecting the judges. They are sent to us from the far off East, probably in deference to the traditional idea that it was from thence all of the "wise men" came. Yielding much to precedent in this respect, we cannot, however, at this late day willingly submit to such a system. The character of our litigation is such that, however learned in the law our eastern judge may be, he will find himself much embarrassed in his new field. Under our State government a Supreme Court is established which is independent and separate, and sits twice in each year. The judges hold their offices for six years, and are elected *by the people*. District Courts are provided with substantially the same jurisdiction as they now have in our Territory. Four districts are provided, but the Legislature has power to increase the number to meet the necessities of the people. County Courts are substituted for the present Probate Courts, with enlarged jurisdiction. Justices of the Peace are provided for, and the right to create Police and Municipal Courts vested in the Legislature. All Judges are required to have resided in the State or Territory at least two years prior to their election. This we submit as a wholesome provision. Moderate salaries have been provided for juidicial officers, and yet it is generally conceded that the amounts are sufficient to secure a high order of talent. The salaries, however, which have been provided are subject to legislative control, except that they are not to be increased or diminished during the term of any officer. All judicial officers, except Justices of the Peace, are prohibited from receiving any compensation, except by salary. The great abuses of the fee system ought not to be permitted to gain any foot-hold in a judiciary system, and the legislature is properly denied the power to change this.

Right of Suffrage.

In addition to the usual qualification of age, a voter must either be a citizen of the United States or have declared his intention to become such not less than four months before he offers to vote. This four months qualification is a judicious safeguard against the pernicious system of manufacturing citizens on election day. The Legislature is also required to pass all needful laws for the preservation of the sanctity of the ballot. Suffrage is likewise extended to women, so far as relates to school district elections, and women may hold school offices, provided the Legislature shall enact laws to that effect.

State Institutions.

Educational, reformatory, and penal institutions are amply provided for, as well as those for the benefit of the insane, blind, deaf and mute. In order that the seat of government may be permanently located, provision is made for submitting that question to the electors of the State at the general election next ensuing after the first session of the State Legislature. The Legislature is prohibited from making any appropriation for capital buildings or grounds, until after the seat of government shall have been permanently located, and no appropriation for such purpose is authorized before the year 1900, unless the proposed appropriation shall have been first submitted to the electors of the State and the approval of a majority thereof obtained. A fair distribution of public buildings is secured by providing that no more than one of such buildings shall be located in any one county.

Education.

No State Constitution has made better educational provisions than the one we present for your candid consideration. The experience of mankind has demonstrated that the happiness, prosperity and permanency of a country is measured by the intelligence of its people. No surer or better means for the dissemination of knowledge among all classes of society has ever been devised than the one here presented. This Constitution commits the State fully and unequivocally to the perpetual maintenance of public free schools; opens the school doors unconditionally to the admission of all between the ages of five and twenty-one years. Three months school is the minimum allowed to any school district in the State. Our magnificent dowry of school lands is most carefully provided for, the grand object being to secure the utmost, both for principal and interest, with a full guarantee by the State against loss or diversion of any part thereof; but that liberal endowment of public lands made to aid our public schools, and to which Montana will fall heir at the death of our present system of Territorial government, is yet under the control of the General Government, and cannot be utilized to our benefit until Montana puts on the habiliments of statehood. It can in no way be used or leased, or even protected for the benefit of our schools. A wise and economic use of the grant will ensure incalculable benefits to the sons and daughters of Montana, and pour a rich endowment into our school fund; but in our present condition the liberal act that provided us such a legacy is practically a dead letter.

No stronger guarantees could have been devised than are contained in this Constitution to prevent our schools of every grade from falling into the hands or under the influence of any sect or creed, or political party.

Revenue and Taxation.

It is fair to say, that no provision of the Constitution received more consideration than the one relating to the subject of revenue and taxation, and especially that portion providing for certain exemptions; and, although considerable diversity of opinion arose regarding it, yet it was apparent from the beginning that a majority of the Convention favored the proposed plan. It was claimed by some that, under this provision, mines would be exempted from taxation, or at least would not contribute their just proportion to the revenue of the State. By it the value of the surface improvements and other property, and the net proceeds derived from operating the mine, are proper subjects of taxation, the mine itself being alone exempt. It

was confidently asserted and plausibly maintained that there is no method known by which the actual value of a mine can be ascertained; that no one can divine what lies beyond the range of vision in the earth; that experience has demonstrated that those who *pretend* to be the best qualified to judge the merits of a mine are often the most mistaken. It was urged that the value of most classes of properity depends upon conditions and circumstances which are apparent and susceptible of estimation, and practicably permanent in their character; while a mine is generally soon exhausted of its wealth, and becomes worthless, and that the improvements thereon, which in most cases have required a large outlay of capital, are also frequently valueless. It was contended, with much force of argument, that if it were attempted, for the purpose of assessment, to fix a value on mines, many properties of a doubtful, and perhaps, worthless character, would by reason of the mistake or interested motives of the assessor be required to pay tribute, while others of greater value and less notoriety would virtually escape taxation, whereby the system would give rise to interminable conflicts, and result in injustice to both the mine owner and State. The system embodied in this Constitution is similar to that of Nevada and Colorado, where it is claimed every mine that is worked yields its just proportion of revenue to the County and State. Finally it was maintained that the industry of mining, hazardous as it is, was worthy of all reasonable encouragement; that this liberal policy will attract to the State millions of capital; will furnish employment to a large part of its population; build up towns and cities, and contribute immensely to its wealth and prosperity. As before suggested, the expediency and policy of these exemptions are questioned by some, but if found to be inequitable, they may be obliterated by an amendment to the Constitution.

The rate of taxation for State purposes can never exceed three (3) mills on the dollar; and whenever the taxable property amounts to one hundred million dollars, the rate cannot exceed two (2) mills on the dollar; and whenever the taxable property amounts to three hundred million dollars, the rate shall not thereafter exceed one (1) mill on the dollar, unless a proposition to increase the rate, specifying the rate proposed, is first submitted to and approved by a majority of the voters of the State. This constitutional restriction secures an inexpensive State government from the beginning.

Public Indebtedness.

This article commits the State, and every county, city, town, township, and school district against lending the credit thereof, directly or indirectly, to or in aid of any person, company, or corporation, for any amount or for any purpose whatever. Counties are also prohibited from contracting any indebtedness, for any purpose, beyond five (5) per cent. of the value of their taxable property. A like provision is made concerning cities, towns, townships, and school districts, limiting their power to create any indebtedness beyond three (3) per cent. of their valuation. The disposition of all new States, and the municipal subdivisions thereof, is to go in debt. We believe that the future will vindicate the wisdom and propriety of these constitutional prohibitions.

Corporations.

Among other things in this Consitution which ought to commend it to the people of this Territory is the provision subjecting railroad, transportation and express companies to legislative control. The power to regulate and control by law the rates of charges for the transportation of passengers and freight by such companie

as common carriers from one point to another, within the State, is expressly asserted, and unjust discrimination in charges prohibited. All railroad, express, or other transportation companies, in existence at the time of the adoption of this Constitution, are prevented from having the benefit of any future legislation, until they shall have filed with the Secretary of State an acceptance of the provisions of this Constitution, in binding form.

Free Passes.

Stringent provisions are made against railroad and other transportation companies issuing or public officers receiving any free pass over such roads. While these provisions are in keeping with the later constitutions, they were, when first considered by the Convention, deemed to be more properly subjects for legislative action than otherwise ; a full discussion of the matter, however, only served to show that an almost unanimous public sentiment was demanding that the Constitution should speak emphatically upon the subject. Yielding to this sentiment, nothing was left for legislative action.

Having thus briefly called your attention to such portions of the Constitution as seemed to us the most important, we submit the same to you with the earnest hope that it will be adopted. Every interest we have in common demands it, and we believe that all the citizens of Montana, without political difference or divisions, will now and here, and at all times and places, demand and unflinchingly maintain the inherent and inalienable right of self government with almost perfect unanimity. As citizens we pay our taxes, observe and obey the laws, and loyally support and defend the Constitution of our country. It cannot be said that, because we have ceased to be citizens of a State and are engaged in laying the foundations of a future great commonwealth, the State of Montana, we have lost any right that pertains to or is inherent in a citizen of theUnited States of America. Therefore as to our right and interest in demanding statehood there are to be considered two propositions :

First, that of population. That we have now a sufficient number of *bona fide* citizens to well and efficiently maintain a State government will be satisfactorily demonstrated at our next general election, when this Constitution will be submitted for your suffrages.

We have within Montana all the elements of solid and enduring wealth : a climate, for health, vigor, and real enjoyment, unsurpassed on the face of the globe ; an area of country nearly as large as the New England States ; mines which are to-day the most prolific in the world ; our facilities for raising live stock most cheaply, but with great profit, are unequaled, and are attracting the stockmen throughout the States ; our soil is rich, and wonderfully productive of all the necessaries and many of the luxuries of life ; our school and mail facilities are excellent ; tens of thousands of live stock are now being driven from the States to Montana as a profitable enterprise ; manufactures are increasing ; our towns and cities are building ; railroads traverse the Territory from different directions ; the compensation for labor is liberal ; these and other considerations are now conducing to bring settlers in great numbers, and capital, in large amounts, within our Territorial limits.

Secondly, But the chief consideration is that of Revenue.

Can we maintain and pay for the increased expenses of a State Government without increased taxation? If this question can be assuredly answered in the affirmative, then we are assured no intelligent citizen of Montana will vote against the proposed Constitution.

It is perhaps unknown to many people of the Territory of Montana that a very great proportion of property now in Montana is not taxable while we are in a Territorial condition, but will be taxable at its just and fair rate the day that Montana shall become a State. Section 2 of the charter of the Northern Pacific Railroad Company is as follows: "That the right of way through the public lands be and the same is hereby granted to said Northern Pacific Railroad Company, its successors, and assigns for the construction of a railroad and telegraph, as proposed, and the right, power, and authority is hereby given to said corporation to take from the public lands, adjacent to the line of said road, material of earth, stone, timber and so forth, for the construction thereof. Said way is granted to said railroad, to the extent of two hundred feet in width on each side of said railroad, where it may pass through the public domain, including all necessary ground for station buildings, work shops, depots, machine shops, switches, side tracks, turn-tables, and water stations, *and the right of way shall be exempt from taxation within the Territories of the United States.*"

The construction given to the foregoing provision of the act of Congress granting such charter to the Railroad Company by the best lawyers in the country is, that the right of way of two hundred feet on each side, with necessary depot grounds, etc., was a grant, and that all buildings, and fixtures of every kind thereon, attached to the realty, and is exempt from taxation. This question arose within a few months after the railroad entered the limits of Montana, in the case of the Northern Pacific Railroad Company against Willis W. Carland, Treasurer of Custer County, which was decided by the Supreme Court of the Territory, at the January term, 1884. In that decision the Supreme Court, in effect, decided that none of the property of the Northern Pacific Railroad Company, its right of way, or anything attached thereto, is taxable, or in other words, so long as we maintain our Territorial condition, the only property of the railroad company which is, under its charter, taxable within Montana, is the handfull of personal property which may come to the knowledge of the Assessor; that the right of way, including lands for necessary depots, machine shops, etc.; also station buildings, workshops, switches, side tracks, turn-tables, and water stations are exempt from taxation within the Territory of Montana.

During the fiscal year 1882-83, the increase of taxable property, in this Territory was nearly eleven and one-half million dollars over the preceding year. That the increase during the present year will be greater than the last, we can safely assume for reasons which are apparent to every intelligent voter. If Montana shall be admitted into the Union as a State at the next session of Congress, by the time we can be fully organized as a State, we will have of taxable property, at a just and fair valuation, at least the sum of *eighty million dollars.*

The increase of costs in maintaining a State government, over and above the Territorial system, will not for years exceed the sum of forty thousand dollars. The Northern Pacific Railroad Company receives the protection of the laws, and equitably and fairly should bear its just and equal burden of taxation with the tax payers of Montana. It is the opinion of some of the ablest lawyers of this Territory, that, when Montana becomes a State, the property of the Northern Pacific Railroad Company can and will be taxed as the property of an individual. There are within Montana eight hundred and twenty-two miles of that road. If rated at five thousand dollars per mile, a moderate value for taxation, and taxed at the rate of one mill on the dollar for State purposes, the increase of revenue from that source alone will pay into our treasury a sufficient sum to pay the difference between State and Territorial governments.

We point with pride to the fact that no shadow of repudiation found its way into our Constitution. That important point is well and securely guarded. Experience has taught the people of the United States that capital and emigration seek a stable and safe government. If Montana were a state to-day, the capital that would seek investment, and the immigrants who would seek homes in this our favored land of Montana, would be increased in an immense ratio. These considerations admonish us to hasten the glad day when the full fruition of all our hopes shall be realized. At present we sustain the same relation to the Federal Government that a ward does to his guardian; we are subjected to the complete control of Congress; we have no voice in the selection of the officers who are sent to rule over us; we are not even permitted to have them appointed from amongst our people; we have no assurance that the laws passed by our Legislature will not be annulled, as was once done in this Territory. Such an utter dependence as this by a great and populous Terrritory has been submissively borne for years. Our maturity and importance have the first opportunity to assert themselves, and the people of Montana are permitted to take the first step toward enlarging their liberties and securing the blessings of Statehood.

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